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Collection

COMPLETE COLLECTION

State Trials

PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

EARLIEST PERIOD TO THE YEAR 1782
WITH NOTES AND OTHER ILLUSTRATIONS

By
T. H. HOWELL, Esq. F.R.S. F.S.A.

CONTINUED

FROM THE YEAR 1782 TO THE PRESENT TIME

By
THOMAS FLEMING HOWELL, Esq.

VOL. XXX.

(BEING THE 10th OF THE COLLECTION)
By GEORGE H. M. A. D. 1832-1833

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State Trials

PROSECUTION FOR HIGH TREASON AND OTHER

CRIMES AND MISDEMEANORS

1841

EARLIEST PERIOD TO THE YEAR 1841

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COMPLETE COLLECTION
OF

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T. B. HOWELL, Esq. F.R.S. F.S.A.

AND
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THOMAS JONES HOWELL, Esq.

VOL. XXX.

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1822.

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T. B. HOWELL, Esq. F.R.S. F.S.A.

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1852.

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ERRATA.

Page 689, line 5 from bottom, for Gomen, read Gomez.

Page 734, line 34, for that, read the.

Page 742, line 40, for th, read the.

Page — line 41, for o, read of.

Page 743, line 38, for rite, read uti.

Page 745, line 15, after Englishmen, insert can dr.

Page 746, line 47, for he, read the.

Page 748, line 28, for a general, read an original.

Page 751, line 2, for and it is continually, read conformably to what is.

Page 1274, line 14 from bottom, to the words master in chancery, should have been subjoined a reference to Lord Orford's Works, Vol. 5, p. 404, 4to edition of 1798.

STATE TRIALS,

&c. &c.

675. Proceedings on the Trials of THE THRESHERS, before the Court holden under a Special Commission of Oyer and Terminer and Gaol Delivery for the Counties of Sligo, Mayo, Leitrim, Longford, and Cavan, in the Month of December: 47 GEORGE III. A. D. 1806.*

SLIGO, December 3, 1806.

A SPECIAL Commission having passed the great seal of Ireland, directed to the right hon. Lord Chief Justice Downes, and the Hon. Baron George, for the trial of certain offenders in the counties of Sligo, Mayo, Leitrim, Longford, and Cavan, their lordships arrived in Sligo on the 3rd of December, 1806, and opened the commission: the Court then adjourned to next day.

Thursday, December 4th, 1806.

The following Grand Jury was sworn:

Rt. hon. lord visc.	James Bridgham
Kirkwall	John Folliott
Rt. hon. Henry King	William O'Bern
Charles O'Hara	Abraham Martin
Edward S. Cooper	Ar. B. Cooper
Owen Wynne	Thomas Soden
Owen Phibbs	Richard Wood
John Irwin	Michael Fenton
Thomas Ormsby	Roger Dodwell
Jones Irwin	Charles Martin
W. H. Phibbs	Robert King Duke
Harlow Knott	Thomas Ormsby

Lord Chief Justice Downes;—Gentlemen of the Grand Jury;—You are assembled here, at an unusual season of the year, to execute a most important duty. Upon an ordinary occasion, I should not, perhaps, think it necessary to trouble you with any observations upon the nature of that duty. But as this is a special commission, much out of the usual

course of time, it may be right that I should address a few words to you, upon the nature of that commission, and to make some few observations upon those rules of law, which will be necessary, perhaps, to be applied to cases, that may be the objects of this commission: and it is impossible for me to observe upon the nature of this commission, without first expressing the most sincere satisfaction at finding so respectable an attendance of the gentlemen of the county, in aid of the law upon this occasion.

The commission under which we sit, so far as it relates to criminal offences, is of the same nature as that under which you have been used to assist upon ordinary occasions at the assizes. But it applies to criminal cases only. Therefore we shall not proceed to try any civil cause, and you will not be called on to execute that branch of duty which you are obliged to do at the assizes; that of providing for the expenses of public works, by presentment: that remains for the assizes. At present, we have only to execute our duty in criminal causes. The occasion of the present commission is, unfortunately, too well known; the unhappy state of this, and some neighbouring counties, where dangerous associations have been formed,* has required some measure to be adopted by the government, to meet the evil before its progress is so far extended, as that the ordinary course of the law might fail to crush the mischief. This commission then has issued, under which we are to act upon the ordinary principles of the law, which, I trust, will be found strong enough to suppress the mischief, to restore public

* From the Report of William Ridgeway, esq. barrister at law.

* See Plowden's History of Ireland, from the Union to 1810, Vol. 2, pp. 405, 415.

tranquillity, and do away all cause of alarm. I am strengthened in this hope, by recollecting, that upon various occasions of considerable public difficulty, perhaps not much differing from the present, similar commissions have been productive of the happiest effects, and I am the more encouraged in my expectation, when I consider the strong provisions which the law has made for protecting the public from outrages committed by tumultuous assemblies; and the great powers with which the magistracy of the county is vested, in order to prevent or detect them. And although I cannot doubt the zeal and activity of the magistrates of this county, and though I am persuaded that it is altogether unnecessary to remind them of those provisions, and of the powers they possess, yet it may not be altogether useless, that some of the principal provisions of the law, relative to offences of the nature to which I allude, should be shortly and publicly adverted to now.

Gentlemen, the experience of every man must satisfy him, that it is not difficult for artful and designing men to hold out to a deluded populace, flattering hopes of a change of their situation, incapable of being realized, and often not desirable if they could be realized, and under pretences seducing in their nature, to cover designs the most atrocious, and which are often concealed from those who by their numbers are intended to be made the instruments of effecting objects, from which if openly stated to them, they would often shrink with horror. Some are thus seduced, and many, as their numbers increase, are compelled by terror, to enter into associations and tumultuous assemblies, often under the control of persons, of whom most of them are as ignorant, as they are of the real views with which they act. This deplorable mischief, the source of every thing that is miserable, the law endeavours to prevent, or suppress by strong provisions: the mere assembling in such numbers as to create terror; wearing any disguise or dress not usually worn upon their lawful occasions; assuming any particular name or denomination used for the purpose of distinguishing such association, and appearing in numbers, so distinguished; any one of these acts is, of itself, a very high offence, severely punishable; and that, although no act of violence be committed by any member of the association: and there is scarcely any act of violence, that persons of the description I have mentioned can do, when so assembled, that the law does not punish with death. Any injury done by such persons so assembled by night, to the persons or property of any the king's subjects, becomes punishable with death; so the procuring others to join them in their offences, either by threats or promises is a capital offence; and as these associations have been found to bind themselves by oaths and engagements to the perpetration of their objects,

the law punishes with death the person administering any oath or engagement, purporting to bind the person taking it, to be of any association, or confederacy formed for seditious purposes, or to disturb the public peace, or to obey the orders of any commander or leader, or to conceal the fact of such oath being administered, or any illegal act committed, all these offences the law punishes with death; and the person, who without compulsion, shall take any such oath or engagement, is liable to be transported for life; and even if compelled, unless he shall disclose the whole of what he knows touching the compelling him to take such oath or engagement, and of the person and persons by whom it was administered to a magistrate, he is liable to the same punishment. And as the law has thus held out its utmost terrors against those, who are guilty of the crimes I have mentioned, so does it arm the magistrate with strong powers for detecting them. The magistrates are empowered, in order to suppress such assemblies, to call upon all his majesty's subjects of whatever description for their assistance, to disperse, apprehend, resist, and oppose all persons concerned in such unlawful acts as I have mentioned; and if, in resisting and dispersing such offenders, any of those offenders should be wounded or killed, the law has authorized that act, and has indemnified the magistrate and those who assist him. Thus then, the magistrates are empowered to suppress such unlawful meetings, of which they may have previous information, and an opportunity of actually resisting them. But the law does not rest satisfied with that provision; it has furnished them with great powers of detecting such combinations, and of discovering the acts they have committed, in order to bring the perpetrators of such acts to justice. If any two justices have reasonable cause to suspect any person to be guilty of any such unlawful assembly as I have alluded to, they have power to summon such person, to compel him to give security to keep the peace, and to commit him if he refuses; and any single justice of the peace who has cause to suspect any person to be capable of giving material evidence concerning these offences to which I have adverted, and which are enumerated in the act called the White-boy Act, is empowered to summon and to examine him upon oath, as to the guilt of others, and to bind him to appear and prosecute; and if the person so summoned shall refuse to submit to be examined, or to enter into recognizance, it is lawful for the magistrate to commit him. But if any discovery shall be obtained, it shall not be made use of against the party giving it.

Gentlemen, these are the principal provisions of the law, to which I have thought it right at present to advert; not that you can receive any information from the communication of them, but that the lower classes of the people may be fully aware of the dangers

they incur, by joining in unlawful confederacies. As to your particular duty, as grand jurors, it is not necessary to take up any portion of your time in describing a duty, with which you are already well acquainted. I shall only add my strong recommendation, that in all cases which come before you, you should examine personally the witnesses for the prosecution, and not depend upon the written informations: and that you will consider, that after your duty here shall be discharged, in your character of magistrates and country gentlemen, your utmost zeal and activity will be necessary to restore tranquillity; and I am confident, that your exertions will receive all possible aid from government. I trust your efforts will be effectual, and I will detain you no longer.

The Court then adjourned for some time, to give the Grand Jury an opportunity of examining the witnesses, after which a true bill was returned against John M'Donough, William Kearney and others. They were immediately arraigned, and pleaded Not Guilty, but saying they would not be ready for trial till next day, the Court adjourned.

Friday, December 5th, 1806.

The prisoners were brought to the bar, but refusing to join in their challenges,

John M'Donough and William Kearney were put to their challenges, and the following jury was sworn:

James Soden	William Gibson
James Powell	Thomas Reilly
Andrew Hume	Alexander M'Gee
James Stewart	John Brown
Edward Gilman	Thomas Moystyn
William Smith	William M'Bride

To whom the prisoners were given in charge upon four several indictments; first, charging that they, with many others, on the 2nd of September last, after sun-set, and before sun-rise, did maliciously and feloniously break and enter the dwelling house of Peter O'Neil, at Cartron Watts, in the county of Sligo, that they maliciously assaulted and injured the habitation of O'Neil, and forcibly took away his money; second, charged a burglary; third, a robbery of O'Neil in his dwelling-house; and fourth, that prisoners provided an instrument for inflicting bodily pain and punishment upon O'Neil, in order to compel him to enter into an unlawful confederacy, called *Threshers*; that they inflicted punishment with that intent, and by menaces and intimidation, exacted money and goods from him, and by threats and violence caused him to send money to the house of James Corkeran.

Mr. Ridgeway opened the indictments.

Mr. Attorney General [The right honourable W. C. Plunkett];—My Lords and

Gentlemen of the Jury;—As counsel for the Crown, it is my duty to lay before you the grounds of the present prosecution. The indictments upon which the prisoners are arraigned, have been read, and you are thereby apprised of the nature of the charges preferred against them. The charges relate to a variety of acts, all, by the law of the land, capital, and if the prisoners are guilty of all or any of them, the consequence is death; the charges in their nature are such as draw down the highest punishment of the law. The prisoners are charged with breaking and entering the dwelling-house of a fellow-subject in the night time; with robbing that fellow-subject of his money, and with inflicting torture upon his person for the purpose of compelling him to become a member of their own lawless and dangerous associations. These are crimes, gentlemen, which no civilised society can tolerate. They bid defiance to all law, and assert a claim of unconditional submission to those who avow themselves the bearers of that defiance. These are conditions under which no government can exist. But if the crimes with which the unfortunate men are charged, however atrocious, did not involve consequences of a peculiar nature; they would have been left to the ordinary visitation of the law, and would be tried at the regular assizes of the county. It is because they form part of a class of atrocities, which disturb the tranquillity, and in their progress endanger the safety of the country, that you have been assembled at this season of the year for the immediate and solemn dispensation of justice.

Gentlemen, it is with great satisfaction I see, upon a subject of this emergency, so full and respectable an attendance, calculated to impress every mind with a sense of obedience to the law. Every gentleman of character, rank, consideration and property, appears at his post on this important occasion, to give his personal sanction to the law. Judges of the land are sent, armed with his majesty's commission, and with a character resulting from their learning and virtues, which reflects lustre and dignity on that commission. Gentlemen, every thing has been done on the part of the government, to let the wretched people of this country see, that there are laws for the punishment of guilt, and that no nerve will be left unstrained, to give effect and vigour to them. I therefore rejoice to see such an array of rank and property upon the grand jury, which has found the bills, and such a respectable description of gentlemen composing the petty jury which I now address, because it must remove from the minds of the wretched people engaged in these outrages, the delusions which have been industriously spread to excite the hope of impunity. In aid of the magistracy, from whom information has been procured, they see the whole body of the county—every man who has talent, character and property,—rallying round the constitution. It is not, therefore, merely for the pur-

pose of inquiring into the guilt of the persons now on trial, but to bring home punishment to the great body of the guilty—protection to the great body of the innocent—to undeceive the abused, and give confidence to the disheartened—and to restore peace and tranquillity to the country, that this special commission has been issued; and you, gentlemen, to perform your sacred part, have been sworn upon the Jury.

Gentlemen, it is far from my purpose or my wish, that through having your minds strongly moved with a sense of the mischiefs prevailing in the country, any of the prisoners should be visited with peculiar hardships. On the contrary, upon an occasion of this kind, it is my duty to caution you against the suggestions of rumour or prejudice: it is our duty to vindicate, not to strain the law. If the prisoners are guilty, the guilt should be brought home by clear legal evidence. God forbid that your abhorrence of the crime should work injustice to the accused. But, gentlemen, you will feel, that it is not irrelevant to the subject, to call your attention to what is, and what has been the state of the county; because it grows out of the association imputed to the prisoners, and it is therefore, that punishment, the consequence of guilt, attaches upon them. And, in calling your attention to the state of the county, and the nature of the outrages, I feel that I do not transgress my duty in the case now before you.

Gentlemen, it is unfortunately too notorious to need any minute statement, that for some time past the peace of the county has been infested by a set of persons assuming the name of "*Threshers*." Their outrageous associations have been in direct defiance of the law, and have originated with men, possessing no situation—whom nobody knows—a set of men, who dare not avow themselves—a description of persons not possessed of any rank—of any property—of any talent—of any education—men, who are not placed in any situation, either by the institutions of society, or their own fitness entitling them to dictate to their fellow-subjects, or to take upon themselves the task of reformation and of legislation. These persons have discovered that the existing laws are not to their mind—they have found out, that there are errors in the state and in the church—and they have conceived that they are the proper persons to undertake the task of reforming them. But not satisfied with infringing the law in their own persons individually, they became associated for the purpose of saying, that no other person in the community shall dare to obey the law. So that the first act of those, who profess to interfere upon principles of liberty, is to exercise compulsion over the consciences of others, and to say, that no man shall presume to form an opinion for himself, nor act upon it, unless it meet the approbation of these self-created reformers. The pretext upon which these illegal confederacies are formed, is a repug-

nance to the payments in support of the legal establishment of the church of the country, and also of the fees which have been usually paid, without any law to enforce them, to the clergymen of the Catholic persuasion. The mode taken to accomplish this object, has been by assembling themselves at night, in disguise, sometimes with arms, going to the houses of such persons as refuse to associate themselves in their body, breaking open the houses of those persons, and robbing them of their property, inflicting torture upon those who become objects of their enmity, and if necessary for the final completion of their designs, if any person be honest or bold enough to give information against them, the business, which began in lawless combination, is consummated by murder.

Gentlemen of the jury, such is the natural progress of associations of this kind. When men enrol themselves for the purpose of resisting the law, whatever the pretext may be upon which they originally associate, the foulest crimes are generated in its progress; that which begins in anarchy ends in murder; and even murder itself, in the progress of outrage, may be only a preparation for the blacker horrors which are to ensue.

Gentlemen, there remains one circumstance of peculiar atrocity with which this matter is connected. In the various forms and associations under which their designs have been conducted, it has been the policy of those people to administer *oaths* to the persons called upon by them, binding them to association and to secrecy. This offence is by law punished with death. The person who commits it must pay the forfeit of his life: the person taking such an oath is banished for ever from his country: the mere circumstance of going to a magistrate and telling him of the oath being taken will not absolve the party; the oath must be taken against his will; for if it be taken voluntarily, he is, notwithstanding such information, liable to be transported for life. This is no new-devised punishment; it is the established law of the land: it has been so for many years; it has been provided, and wisely, by the legislature to meet the outrages, which from time to time have infested this country: there is no disproportion between this punishment and the crime which strikes at the roots of morality and religion, and tends directly to destroy those principles, which are essential to civilized society. Gentlemen, an oath is the sanction, by which, under the law of the country, we call upon the Creator to attest the truth and purity of our words: and this solemn sanction which our civil institution has borrowed from our religious code, is prostituted to bind together an association of traitors, robbers and murderers. The name of the living God is appealed to, for the purpose of witnessing and ratifying the infernal compact, by which these wretches league themselves against law and religion. Gentlemen, it produces a revulsion

of every moral feeling to hear of such conduct; not that it is a violation of the laws and usages of society, but because it is an outrageous blasphemy against our Creator to call upon him to attest and sanctify the crimes of his creatures.

Gentlemen, it is not necessary now to dwell upon the illegality of those associations; but while they profess to attack the property of the church, I cannot pass them by without a few observations. The tithes of the clergy of this country are their property; they are secured to them by the same laws which secure to every man amongst you his estate, or his property, whatever the description of it may be; the same laws and the same right, by which any gentleman who hears me, holds his estate, transmitted to him from his ancestors—the laws which secure the fruits of each man's individual industry—are the title by which the property of the clergy is secured to them; and I do trust, that there is no man so selfish as to look to any system, by which the property of one part of the community shall be protected, and that of another despoiled. If there be any man so selfish as to wish it, let no man think it can be done. Let a multitude be assembled under the empire of Threshers and Shakers, armed and arrayed in order to make head against the rank and property of the country, and what shall stop their career? I wish my voice to extend to every man within these walls—to every man of sense and reflection; I would tell him, that there is no protection for rank, for property, for the state, but by resisting those disturbers, and making them feel the irresistible weight of the law. They say, they rise to redress grievances! But, gentlemen, there is a mode known to the constitution of redressing grievances, and there is no law to prevent men from stating them: there is a legal mode of claiming relief.

This I will say, that the constitution of the church is intimately connected with the constitution of the state; it is a part of the same fabric, which has been handed down to us from our ancestors, and if there be any thing imperfect in it, no reflecting man will approach it, for the purpose of alteration, without extreme caution; he will be careful, in the attempt to remedy its imperfections, not to affect the substance, or even the proportion or beauty of the ornaments. But by whom is this task of reformation undertaken? By the dregs of the community—anonymous ruffians, who fear the face of day, whose title is founded in anarchy, and whose pretensions are enforced by robbery and murder!

I cannot pass by another feature of these associations: I mean their attack upon the priests. I meddle not with religious rights; I mean the attack which is made upon the support derived from the voluntary bounty, which the members of the Roman Catholic persuasion have been in the habit of giving to the ministers of their religion, for celebrating

the rites of that religion. It is not that they say we will not pay, for there is no law to compel them to pay: but they proclaim this, that no man, who chooses to do so, shall dare to pay his priests their fees! For what purpose are these fees given? They are given to obtain the rites of their religion: they flow from a sense of religion; they flow from voluntary bounty; they are enforced by no compulsion, the unfortunate men who receive them are armed with no law for their support; and yet these associations are formed—To do what? To rob the priest of the reward of his benedictions and his prayers! Do these men, besmeared with blood and covered with crimes, imagine, that the ceremonies of religion, which are plundered from their clergy, can give them a passport to a better world? I cannot help feeling and deploring, that this view of the subject suggests an apprehension, that the devisors of this plan could have had nothing less in their contemplation, than eradicating from the minds of those upon whom they could operate, all sense of religion. Nothing but their hellish machinations could have devised such a scheme. If they expect that the people will be ripe to perpetrate crimes worse than these; if they wish them to be the ready instruments of every design which is diabolical, there is no plan so effectual as the extinction of every sentiment of religion in the minds of the common people. What may be the form of the religion of the several classes of the people, I care not to inquire. If the principles of Christianity prevail—if the sense of obedience to a supreme ruler of the world—if the conviction of the existence of a future state, in which rewards and punishments are distributed, be kept alive in the minds of the people, they will never become the instruments for the commission of abominable crimes. But if these sentiments be extinguished; if the people shall be taught to cast off all regard for a future world, the ties which bind them to earth, as well as to Heaven, are rent asunder.

Gentlemen, we have had a miserable example in our own time. You may recollect, that not many years since, in a neighbouring country, the most dreadful atrocities were committed: you recollect the overthrow of an ancient monarchy; that overthrow, deplorable as it was, was not the most dismal scene of the tragedy. The horrors of that unfortunate revolution, in which the hands of the father were imbrued in the blood of the son; in which all moral and social relations were raised in mutual warfare, could not be perpetrated, until the sentiments of religion were previously extinguished in the minds of the people. Human nature was not outraged by gross and unexampled crimes, until a solemn decree was framed, declaring, that there was no God in Heaven! What the consequences were, every man knows. But this I state, that as soon as a settled form of go-

vernment was established, it was found, that atheism and infidelity, which were the ready instruments to throw down an ancient throne, were an insecure foundation for a new one; and one of the first acts of the founder of the new dynasty was to restore the consolations of religion to his anxious and supplicating subjects.

Gentlemen, it is no wonder, that those who searched after democratical equality should be the foes of religion; religion is the genuine equality of mankind: it is the poor man's friend; during the troubles of this life, it renders him content with the lot of inferiority, which is the condition of his nature, and in the last awful hour of existence, it puts him upon a level with the highest and most exalted.

Gentlemen, it is melancholy and disheartening, that our wretched peasantry can be deluded by such arts, and that after such miserable examples, they should be thus imposed upon. For half a century attempts have been made upon the infatuated people of this country. What has been the consequence? Disgrace to the perpetrators; failure of their plans; ruin and death to themselves. Yet what is the condition of the poor unhappy people of this country; as soon as any disaffected mountebank appears, proclaiming his laws and imaginary benefits, they become the willing instruments of his schemes, and their own destruction. Is it possible, they can for a moment imagine, that a great empire like this, armed with the law, protected by an army, with a regular administration of justice,—are they so infatuated, as to imagine that all these will yield to a few miscreants like those, under whom they have enlisted themselves? It is therefore principally to undeceive these miserable wretches; to rescue them from the grasp of fiends, who are working their destruction, that the law is here, at this unusual season, to speak its emphatic language. What the law is I will tell you. What the consequence of infringing it is, you, gentlemen, will tell; and I cannot help feeling, that in the consequence of this commission, we may look to an end of the confusion and anarchy, which has prevailed, and that the vicious may again be brought within the ordinary channel of subordination.

Gentlemen, in speaking as I do, with indignation for those crimes, I feel from the very bottom of my heart compassion for the victims of them. Seeing the mischiefs which have been spreading in the country by the artifices of miscreants, it does not surprise me at all, that many persons should be of opinion, that measures more summary should have been adopted, for the purpose of at once extinguishing these mischiefs. I am satisfied that the opinion of such men was dictated by a feeling of the truest regard for the interests of their country—of genuine compassion and mercy towards the unfortunate delinquents

themselves. But yet, my lords and gentlemen of the jury, I trust that the government of the country will ultimately acquire credit from those who entertained the opinion I have mentioned, for the course which has been adopted in the present instance. The feeling of the government has been, that the insult which has been given to the laws of the country is best vindicated by those laws themselves. The persons, with whom we are now called upon to cope, do not compose multitudes too strong for the arm of the law. It is not an assembly daring to stand before the exertions of the magistracy, but it is a lawless association of men, who find their safety in their obscurity, and I cannot help feeling a confidence, that when the victims of delusion shall have been undeceived; when they find that the law was adequate to their punishment; that the laity make common cause with the clergy, when they see atonement made to the laws by the speedy and energetic administration of justice, now in progress amongst you;—I say, I feel a confidence, that after they have seen the array of this country drawn up for the investigation of their crimes; after they have seen the assemblage, this day, of every man of rank, character, and property, feeling their interests united with those, who have been the subject of lawless attack; that the most salutary consequences will be experienced, and that these people will at length be convinced, that when they dare to raise their hands against the laws of their country, those laws will be found to have weight enough to fall upon and crush them.

What! gentlemen, would it not be a miserable state of our country, to suppose, that armed as we are by the law—supported as we are by the aid of every gentleman in the country, and with an armed force, if such be necessary—associations of men, whose names are not known; of no rank, property or station, could not be put down, without doing away, for a time at least, the ordinary constitution of the land? If the time should unfortunately come, when, what is now tumultuous rising, shall assume an aspect of a different nature; if ever (which God forbid!) those scenes shall be renewed, which we formerly witnessed; if treason shall rear its head in the country, and supersede the law, these wretches will have to sink under the tide of ruin, which will be let in upon them. But I trust that no visitation of that kind will occur; but that with the ready assistance of the government, and the aid of every loyal man, we shall be able to bring punishment upon the guilty, and that the law will be strong enough to wrestle with and put down these disturbers of the public tranquillity.

Gentlemen, I shall say only a few words more. The laws in being, of which I shall make a short statement, will appear to every one particularly calculated to meet the outrages which at present exist. They are laws,

which have not been recently introduced; for half a century, the country has been visited with partial insurrections; during a portion of the reign of the late king, and during the entire of the present, laws have been enacted, calculated to meet these crimes. These laws are still in full force and operation. If these insurgents assemble with arms; if they assume any particular denomination, or wear any badge, to the terror of his majesty's subjects, by that mere act of assembling, though no farther act be done, they are punishable by law. The magistrates are authorized to disperse and apprehend them. If they resist, and any be killed, the magistrate is indemnified; and if he has just cause to suspect, that any person can give information respecting such outrages, he may summon the person, examine him, bind him in a recognizance to appear, and commit him in case he refuses. I wish this was generally known, that if any man meet such an assembly he is called upon to disperse it, and to apprehend the persons assembled; and if death unfortunately ensue, the magistrate is indemnified.

The magistrate is also armed with extraordinary powers to preserve the public peace. He is entitled to call for the assistance of every man in the county. The power which the law has, in ordinary cases, entrusted to the sheriff, that of raising the *posse comitatus*, is, in this instance, given to every magistrate; and if any man refuse to give this assistance, he is guilty of a misdemeanor. Persons not entitled by law to carry arms, are liable to have their houses searched, and the law protects the person making the search. If any persons, tumultuously assembled, shall assault or injure the habitation or property of another, they are punishable with death; every person who administers an oath, whatever the nature or purport of it may be, binding the person taking it, to be of a particular party or association, is punishable with death; any person who voluntarily takes such oath, is liable to be banished for ever; and he is not to suppose that after voluntarily taking such an oath, the mere circumstance of going to a magistrate and telling him, will protect him;—two circumstances must concur to save him from punishment, first, that he was compelled to take the oath, and secondly, that he gave immediate information of his being so compelled; so that here are abundant provisions for the punishment of these offences. But, gentlemen, it has been industriously circulated that these laws have expired; I tell you, and those who hear me, what was stated yesterday from the high authority of the Bench, that these laws are in full force and existence; and every man joining in unlawful confederacies is liable to the penalty inflicted by those laws.

Gentlemen, I have also to inform you, that under the statute of the 15th and 16th of his present majesty's reign, commonly called

"The White-boy Act," any person who harbours, conceals, or gives assistance to any person concerned in such outrages, is as much guilty as the person so concealed; and any person who supplies *horses, arms, or ammunition*, for the purpose of these confederacies, is liable to forfeit his life. Gentlemen, armed with these laws, which have been found competent to put down insurrections, as alarming as the present, with the honourable zeal and activity of the magistrates, which you may confidently look to, and with the sincere desire of government to protect the loyal, and reclaim the guilty, are we to despair of being able to cope with the mischiefs, and not to look for the restoration of tranquillity and peace? I cannot so persuade myself, and I am not uneasy as to the result.

Gentlemen, with regard to the particular case now before you, it will appear that the prisoners, on the night of the 2nd of September last, with many others, attacked the house of Peter O'Neil, at Cartron Watts in this county. He had been *audacious* enough to say, he would pay the dues which he had been accustomed to pay; he was not prepared at the instance of these legislators to renounce his obedience to the laws; he said, he would pay as he had formerly done. This was *high treason by their laws*; they repaired to his house: they broke it open; they dragged him naked from his bed; they asked him for money; that is part of their system for redress of grievances; he had only one ten-penny piece; he had no more; but he was desired to send more to the house of a person whom they named, but who is not now upon trial; they took him away naked, and one of the party had an instrument for carding wool, with which they inflicted punishment upon him, by severely excoriating his back; the prisoners will be identified by O'Neil, his wife, and son, who plainly saw them; so that there are three witnesses to the transaction. If these facts shall be proved, there can be no doubt of the melancholy necessity which will be imposed upon you.

O'Neil gave information to Mr. Soden, the magistrate, and exhibited his back, which was excoriated with the torture which had been inflicted upon him; so that with regard to this being a case within the statute no question can arise: but if the evidence be not clear and satisfactory, no sense of danger or alarm should induce you to find a verdict against the prisoners. It will then be your duty to acquit them; but if you have no doubt of their guilt, I will not degrade you or myself by supposing, that any of you would shrink from a firm and manly discharge of his duty.

Peter O'Neil sworn.—Examined by the Solicitor General

Where did you live in the month of September last?—Within a couple of miles of this town, at a place called Cartron Watts.

Did any thing particular happen at your house in the month of September last?—Yes, sir.

At what time in September?—I cannot tell the night of the month; but it was the Tuesday before the races [this appeared to be on the 2nd of September.]

About what hour?—It was between one and three: they were at Campbell's about one, and I think it was two hours before they came to me: they had searched nine other houses before they came to me.

What was done?—I was lying in bed: they rapped at the door pretty smart; I asked, who was that? "Open the door," said he; "What do you want; this is an odd hour of the night to come and have doors opened," said I. I asked them again what they wanted? They said, they wanted money for Mr. John the Thresher, and his men, and that they must be supported. I said I had none; and then they burst in the door, breaking the door off the hinges. I started up quite naked, and got upon the floor, not being able to find my shirt.

Had the door been fastened before this happened?—It was barred and bolted; the hinges were new, and the door was split and broke.

Did you see any persons you knew?—I did; it was moon-light, though there was some rain.

Look round and see if you know any of them here?—I know these two men, John M'Donough and William Kearney.

Did you see them at your house that night?—I did.

Were they dressed in any particular manner?—They wore white shirts over their clothes, and white scarfs upon their hats.

Had they any arms?—Some of them had rusty swords and bayonets, and Jack M'Donough had a gun.

Are you certain of that?—Yes; I remember it from a blow he gave me, which will mark me to my grave.

Had Kearney any weapon?—He had an old sword.

Did either of these two men say any thing to you?—They did.

What did they say?—They desired me to be quick—quick—had I the money ready for them.

Which of them said that?—Billy Kearney, and his party.

How many had he with him?—As far as I understand there were thirty; I followed them for a mile afterwards?

Are you certain there were twenty?—I am sure there were twenty-six, if not twenty-eight.

Were they all dressed?—They were all in white, like M'Donough and Kearney.

Did these two men call themselves by any particular name?—They called themselves "Mr. John the Thresher, and William the Shaker."

Who called himself the "The Thresher?" M'Donough.

And who "William the Shaker?"—Kearney.

Had you known these two men before that night?—I knew one of them, Jack M'Donough, seventeen years, and Kearney thirteen or fourteen years.

When these men desired you to be quick and to have the money, what did you say?—I said I had no money at the present time; but if I knew them to be coming, I would have had some for them, thinking to get off easy. I told them I had two guinea notes belonging to Mullins, which had been called down, and were of no use to them. I said this, in order to get rid of them, if I could with satisfaction.

Was your wife present at this transaction?—She was.

Was any other person present?—My children, big and little as they are, were there in their skins.

Did you give these people any money?—I had some money; but I told them I had only one tenpenny piece, and my wife said she had another. They said, we were selling milk and turf every day, and could not but have money. They took me out of the house, and M'Donough and Kearney ordered them to make ready the cards, and I heard them rubbing the cards together.

After you heard the cards, was any thing done to you?—They bid me walk on; and when I went two or three steps I got the first rub; and when I looked back over my shoulder they struck me six or seven blows with sticks upon my hips.

Were you injured in any manner with the cards? I was: that was the first; but going further on, they rubbed the other shoulder to make them even; and they struck me with sticks and bayonets, surrounding me, as hounds do a hare. I did not look round after these strokes, because they were worse to me than the cards, and I got no strokes for some time; but they carded me, and then they struck me back again to the house.

How far did they take you from the house?—About thirty-two yards, and back again to the house. I have measured it since with a weaver's yard, for they brought me as far as a bush, which I knew; and they ordered the men to form into a body and be quick; when they put me into the house, they gave the word of command.

Who did that?—M'Donough and Kearney.

Did they act according to these orders?—They did; and as I was going into the house, M'Donough gave me the last stroke with a gun, across the small of my back; and I was so hurt, that I could not tie my shoes for twenty days, and I never will be the better of it. Two of my ribs were broke.

At the time you and your wife said you had a tenpenny piece each, were you desired to do any thing?—I said, in order to get rid of them, that I supposed that they had a house in the

country for the purpose of refreshing themselves, and that I would send money there; and that I was sorry I had it not for them at that time. I said this in order to get rid of them; but I saw they were sore against me. We had a little money lying by, and would have given them some, but I would not make a liar of myself, having told them I had none but the tenpenny bit. He said I should send it to Jemmy Corcoran's or Biddy Rogers. I said I knew Corcoran, and was a comrade of his, and I promised to send the money to him. My wife brought four pieces there; but seeing so much money upon a table, and that stronger people than her paid but one piece, she left but one, especially as Corcoran was not there, but only a young girl.

What was it that made these people sore against you? What religion are you of?—A Roman.

Did you pay dues to your clergyman?—I did; and said, I always would, and why not?

How old are the five children who were in your house?—One is seventeen years of age last Candlemas; the next is fourteen or fifteen.

Did you give this party any money?—Two tenpenny pieces were handed to them, but what became of them I cannot say; such was the confusion, the children crying, and these people dragging me about.

Peter O'Neil cross-examined by *Mr. Baker*.

How long have you resided in this country?—Eighteen or nineteen years.

Where did you live before you came here?—In the county Tyrone.

What name did you go by there?—Peter O'Neil.

Did you ever go by any other name?—That was the name that was christened to me.

That is not the question; I asked, did you ever go by any other name than that of Peter O'Neil?—Never; men may call me what they pleased, but I used no other name.

You say there were thirty men in this party?—There were twenty-six or twenty-seven.

They were extremely cautious, lest their faces should be seen by you and other persons in the house?—I saw these men's faces.

Did not all the party seem cautious, lest you should see them?—I was among them for some time.

But were they not anxious to conceal their faces?—They were striving to hide their faces sure enough. I am sure they did not wish to be seen, or they would not come by night, when they had day-light to work in.

Did you ever hear of any rewards being offered to persons who would discover those who are called "*Threshers*"?—By virtue of my oath, at that present time I did not. Mr. Soden the magistrate is here, and can tell you.

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When did you first hear of rewards being offered?—I did never hear of it at that time.

What time do you mean?—The night the *Threshers* were with me.

Did you never hear of papers being posted up at the chapels and other places, of rewards being offered?—I never did to my knowledge, nor was I ever promised any.

The question is, did you ever hear it?—I never did.

Did you ever go to hear the word of God after that night?—I did.

Did you see any papers fixed to the chapel door?—I am no scholar.

But did you see any papers upon the door?—There are many papers put on the door for cants, and rewards for things lost.

But did you hear of rewards being offered for the discovery of the *Threshers*?—I did not, till long after.

Did you ever hear of a place called Banada, in this county?—I do know it.

Are you in the habit of buying and selling cattle?—Often I did.

Were you ever at Banada upon a fair or market day?—I was one day after Christmas dealing with pigs.

Had you any thing to do with a heifer, or a cow, or a beast of that kind?—That is only a bundle of nonsense; I have bought and sold cattle.

Answer the question; had you any other cattle at the fair beside pigs?—I had a good many at different fairs.

What other beast had you last for sale beside pigs?—A horse.

What beside the horse?—A cow.

Now it comes out. Did any man tell you, that you came by that cow not in the best way?—No.

Do you know Thomas Dolan?—No, sir.

Do you know a man of the name of James Murphy?—I do, sir; he lives in this town.

Did you ever see him in the fair of Banada?—I do not know; I knew him in this town.

Did you ever see him in the fair?—I cannot tell; I might and I might not.

What do you believe?—I do not know whether I did or not.

Do you believe you saw him or not?—I cannot say whether I did or not.

Court.—Do you mean to say, you can form no belief?—I cannot say, my lord; I might or I might not have seen him.

Mr. Baker.—Did Murphy ever tell you that the cow was the property of another man; or did any man ever claim a cow said to be stolen by you?—Not to my knowledge.

What do you believe?—They may believe me; but I know nothing of it.

Did such a thing occur as a man challenging a cow exposed to sale by you in the fair of Banada?—There never was a stolen cow taken in my possession since I was born.

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But was a cow or other beast ever challenged which was exposed to sale by you in the fair of Banada or elsewhere?—They blamed me for it, but could make nothing of it: I stood their defiance for it.

Who made up the matter between you and Dolan?—I know nothing of that.

Do you not know James Murphy?—I know nothing of him.

Do you say, you do not know him?—I know the man, but nothing of the business you mention.

Did he ever interfere respecting the cow said to be Dolan's property?—He did not.

Were you not obliged to give up the cow upon that occasion? Was the cow taken from you?—No, sir. When I heard the cow was blamed to me, I left her in the pound, and went to inquire for the people who claimed her; but I did not know whether she was stolen or not.

How long had you that cow in your possession?—I swopped her that morning in the fair.

With whom?—A man who lived six miles off, as he said.

What time was she claimed?—Between twelve and one.

Did you make any attempt to discover the man?—I did.

Did you make him out?—I did not, not knowing his name; but I got my own cow.

How did you get her and the man not there?—She had not left the fair.

Who had her?—A little gossoon of a boy; and getting my cow, I gave up the other.

Did you offer a horse for sale that day?—No, not that day.

But you did upon another day?—I did. I offered a horse for sale belonging to a friend of mine.

Had you any other business there that day?—I had a heifer of my own: we had some drink together, and I helped him to the sale of the horse.

You said you never heard of rewards being offered?—I did not.

Did you never hear of a man of the name of Matthew Ward?—I do in Sligo here.

Did you ever tell him any thing about rewards?—I did not.

Recollect yourself. Did you ever tell him you were offered 300*l.* for prosecuting?—No; but he asked me did I get such a reward: nor did I ever get more than 1*s.* 3*d.* from the general.

Did you ever tell Ward, that you were to receive 300*l.*?—He said I was to get 300*l.* I told him I did not, nor did I ever hear I was to get it.

Did you ever tell him, or any other, that you were to get 300*l.* for this service?—Upon my word I never did.

But upon your oath did you ever say it?—I did not, nor could not: let any person prove it.

Do you not deal in leather?—No.

Had you ever any in your possession?—No.

Were you ever charged with having any stolen leather?—I never was indeed.

Do you know Laurence Summers?—No, sir.

Do you know Laurence Summaghan?—I do. Where does he live?—At Bogheroe.

Did he ever see you in any awkward situation?—No.

Did he ever see you in custody, charged with having any stolen leather?—Never; I defy him.

Do you know George Rochfort of Sligo?—I do; a comber.

Do you know any other of the name?—I do; one who sells liquor.

Did you owe money to either of them?—Not to my knowledge; I never had dealings with the comber, but to sell him a heifer, and I had drink from the other man: I may owe him for half a pint, or some such thing, and my wife may owe the other the price of a comb.

Did you ever, upon being applied to by either of them, promise to pay him money?—Why should I?

Did you ever swear upon a book, that you would pay him?—I had no dealings with them but such as I mentioned.

But did you ever swear you would pay any particular sum?—I told him I would pay him the price of the comb.

Did you ever swear you would pay any particular sum?—I did not; my wife was to pay the price of the comb.

Court.—But did you ever take any oath to pay money?—I did not.

Mr. Baker.—Both of the Rochforts are honest men, and to be believed upon their oaths?—What can they say against me?

Would you believe them upon their oaths?—I never owed them two-pence, but what I mentioned.

But are they honest men?—I never heard any thing else of them.

Would they perjure themselves?—I am sure they would not.

Are not the prisoners generally reputed well-behaved men in the country?—I have nothing to say against them, but what they did to myself.

Mr. Solicitor General.—How soon after you were carded did you swear informations?—On the Saturday following.

Before whom?—Mr. Soden.

A Juror.—Did you ever talk with Mr. Abercrombie upon this business?—I did.

Did you ever hear there was a quarrel between him and Kearney?—I did not.

You said, they were very sore upon you: can you give any reason for it?—I believe if I had money to please them, they would not hurt me.

Did they offer to swear you that night?—They did not.

Were you ever sworn?—I was about twelve years ago in the former troubles, when the militia was first raising: the landlords were obliged to bring in all the people, and I was sworn among the rest to the oath of allegiance.

How old are you?—I cannot say.

Did you never hear any of your people say?—I might, but do not recollect.

Are you forty years of age?—I believe so.

Do you believe you are thirty-five?—I believe I am, but cannot say.

Were you married when you came from the North?—I was married before that.

How old were you then?—I cannot say.

How many acres of land have you with your house?—I have had different quantities at different times.

You said, there were twenty-seven men at the attack?—I think so.

You said, you followed them two miles?—No; only one mile.

For what purpose did you follow them?—To see how they behaved themselves, and where they went.

[Here the juror who asked these questions, exclaimed, "That is a fine boy; all weeds should be taken away in the bud, and we should not be left in such a state; this is my prerogative, and I will exercise it."]

The same Juror.—Did you see a paper upon the chapel door?—I did not.

Did you ever ask any of the neighbours about such a thing?—I did not, sir.

Juror.—Very well, sir!

Mary O'Neil sworn.—Examined by Sergeant *Moore.*

You are the wife of Peter O'Neil?—Yes.

Where did you live in September last?—At the Windy Gap [this was another name for Cartron Watts.]

Do you remember any people coming into your house?—I do, and will while I live.

How long have you been in the county of Sligo?—Seventeen years next Christmas.

How long have you been married to Peter O'Neil?—Seventeen years last May.

How old is your eldest son?—Seventeen years and nine days next Candlemas.

The night the people came to your house were you in bed?—I was.

Where were your children?—In their bed.

Was your eldest son there?—He was, the whole family were in bed; they came in great alarm, when the door was broke from its hinges with the force.

Was that the first thing you heard?—They desired the door to be opened; on that my husband called out what they wanted; they answered, "Money, money, more or less for Captain John."

Did your husband continue in bed?—He bounced up, and they came in.

Had he any thing upon him?—Nothing, but as the Almighty made him, for he could not make out his shirt.

What was done?—When they demanded money, he said, he did not know they were coming, or he would have some liquor for them.

Had you any money?—We had, but did not make it out, there was such a puzzle.

Was any money produced?—There were two tenpenny bits.

What did they do with the family?—Nothing; the children cried murder: they took my husband out and kept him away a quarter of an hour.

Did you see any of the people?—I did; it was moonlight.

Look at the prisoners, and say, if you know them?—I think this is one.

Can you take upon you to say positively that he was one of the party?—I am quite certain of it.

Look at the prisoners again, and say if you know them?—I am certain of Billy Kearney, and John M'Donough.

Were you acquainted with them before?—I was, and saw them well that night.

Where did you see them?—Near the door, and a gun in John M'Donough's hand; there was a man kept sentry at the door, with a sword; my son wanted to get out, but the man at the door would not let him out; I wanted to get out also, but they said I should not breathe.

Did your husband come back?—He did, and closed the door.

Did you see the state he was in?—I did not then; he got part of his clothes which he put on, and took the rest with them and went out, but he did not like to let me know the usage he got.

Do you recollect any thing particular the sentry said?—No; but he was taking fire out of the stones all the time, and threatening me not to speak.

What was he taking the fire with?—With a sword.

Did they say any thing?—My husband asked what reason they had for using him so. They said, that he had mentioned at a glass the Sunday night before, that for half an acre of land he would turn to the church; they then wanted to kill a calf, but one of them said, "No, we have done enough to-night."

Court.—Had your husband said any such thing?—No, but he was drinking with one of the prisoners in the dock; they were talking of tithes, and charged him with laying out his oats before other men, and he said, he did not regard the Threshers more than any other men in the parish; and he said he would pay his right; that happened on Sunday, and upon Tuesday they attacked us.

How long did your husband stay abroad?—I cannot tell; he returned a little before day, and in the morning he showed me the way he was in.

In what state was he?—In red flesh; torn across both his shoulders, and he was worse where he got strokes in the hips and groin with the muzzle of a gun. He was not able to stoop with the way he was in, and on one side he was black.

Did you, after that, take any money to any place?—I did, to James Corcoran's. My husband sent me two days after with four tenpenny pieces. I inquired for the man of the house, and he not being at home and seeing only a little girl in the house, I left but one, and did not own to the other.

How came you to take the money to that house?—They gave it out to leave it there.

Did you tell your husband what you did?—I did not for three or four days after, because I thought he would be angry at my not leaving all the money.

Have you lived at that place since?—I did till this day week, when I left it from fear, and it was given up to the landlord.

Mary O'Neil cross-examined by *Mr. Baker*.

At what hour of the night did this party come to the house?—I cannot say; I suppose it was between one and two, I cannot be particular.

Did you hear your husband say it was between one and two?—I did.

Was the breaking of the door the first you heard?—It was.

Did your husband say that was the first appraisal he had of their coming?—He did.

Did the prisoners enter the house?—They did not.

You remained the whole time in the house?—I did.

And M'Donough and Kearney remained outside the door?—They did.

There was considerable confusion in the family?—We were greatly alarmed.

Then how can you recollect the faces of the people outside of the house?—There was no obstacle to my seeing them, they stood fore-nent me.

When you were asked to identify the prisoners, you said you *thought* they were the persons?—I am quite certain.

Do you know any others of the party?—I do know another.

Were you not led to identify these men from knowing their voices more than their faces?—They drew up at a wall at a distance opposite the house, and only a small party came to the door.

Did you ever say you knew none of the party that were there that night, save that you believed M'Donough was there, and that from his voice?—Perhaps I might know more of them if I could have gone out.

But did you tell any person what I mentioned?—I durst not tell any person that I knew any of them.

Did you tell any person, that you did not know any of the party?—Perhaps I might to save myself,

Had you any such conversation?—There was many, and they asked me about it, but I did not give in to know them.

Had you any conversation with Henry Watts about it?—I was with him since my husband went away.

Did you tell him you knew none of the party, save M'Donough, and him only from his voice?—I might have said so for reason to prevent myself from being destroyed.

Did not your husband of his own free will and accord order you to go to Corcoran's with the money?—He did.

Was it not first suggested by him, that the tenpenny pieces should be left there?—The party mentioned it; he asked where would he leave the money, and they mentioned Corcoran's house?

Do you mean to say that the party first asked him to leave the money at that house?—They did, when he objected and said, he could not make up any money for them; worth their accepting, they answered and desired him to leave it at Corcoran's.

Do you swear, that the party first demanded money?—To be sure; for why would he send money, if they did not ask it.

Your husband had no conversation with these people before they burst in the door?—Not to my knowledge.

Could he have any conversation with them without your knowledge?—I think not, I do not know what conversation they had abroad.

Did you hear any thing of a knock at the door?—I heard no knock, till they broke in.

If he swore he had a conversation with them before they broke in, would you believe him?—I cannot answer for him.

Were ye in the same bed?—We were.

Could any conversation pass without your hearing it?—Not as long as he remained in the bed.

Did you ever hear of any rewards having been offered by the magistrates of this county or other persons for the discovery of Threshers?—Not at that time.

Did you since that time?—I did.

Did you not hear of papers being put up on the market house, and the chapel door?—I did sometime after.

How soon after?—I cannot say.

Did not all the country hear of these rewards?—I suspect they did.

Then of course your husband, who was so materially interested in this matter, must have also heard of these rewards being offered?—Perhaps he did, I cannot say.

He and you had some conversation about them?—Not a word, I did not wish any such thing to come across me. I was quite happy, if they let me alone.

Did you hear your husband was charged with cow stealing?—I did not.

You paid something for him at one time?—I paid for four or five pound of meat, that was eat by Bryan Donoughy's boy.

But your husband was taken up for it?—No, sir.

Who interposed and adjusted the matter?—Mrs. M'Gowan.

Did your husband know that he was charged with stealing that meat?—He never stole it.

But did he know he was charged with it?—He did not, he was in this town, and I paid for it without asking him, for fear any harm should come across him.

Was there any thing else laid to his charge?—There was.

What?—A horse that was got at Mr. Holme's place, but he was not guilty of it.

A Juror.—Some time before your husband was carded, he and the prisoners were drinking in a public house?—Not these men, but Nelson.

Juror.—I give that up; your husband was carded, as I believe, having heard of it; but you say he came home a little before day?—He did.

Juror.—Why did he go out?—I did not ask him; but I asked him where he was, and he did not tell me.

Juror.—I have done with that. What time did you go before the provost?—I believe in three weeks.

Juror.—But he said his feet and legs were in such a state that he could not walk.

[Here this juryman was informed that neither the witness nor her husband had said any such thing: the account was, that he could not stoop to tie his shoes.]

Juror.—I misunderstood the witness; I did not sleep till six o'clock this morning.*

James O'Neil sworn.—Examined by Mr. Webber.

How old are you?—Seventeen next Candlemas.

Where did you live in September last?—At Windy Gap.

At whose house?—At Peter O'Neil's, my father.

Do you recollect any thing particular happening there on the night of the 2nd September?—I do, sir.

What was it?—This man, William Kearney and others came to the door: they asked was my father asleep.

What was done with the door?—They knocked it in.

Did you get up?—I did; and looked through a window, and knew William Kearney and Jack M'Donough.

Look about and try if you see them?—These are the very men who were there.

By virtue of your oath did you see them?—I did; and by the same token I looked through the window; they took the hand-

kerchiefs off their eyes and whispered together.

Were there other persons there?—There were, but not so near the house.

Did any of them come in?—M'Donough and Kearney came in, and took my father away.

Did they ask for any thing?—They did: they asked for money for *John the Thresher*: my father said he had no money in the house, but would leave it where they desired.

Were they content with that?—They were, and brought him out and carded him.

Did you see that?—I did at a distance.

Did they do any thing else?—They beat him with guns and sticks: he came back in a short time, put on his big coat and small clothes, went out, and did not return till daylight.

Was any place appointed to send the money?—James Corcoran's.

James O'Neil cross-examined by Mr. Baker.

Do you know Mr. Abercrombie?—I do.

Had you any conversation with him as to this trial?—I had.

Did he ask you what you could swear against the prisoners?—He did not.

What conversation had you with him?—I was hired by him a month or five weeks ago.

Then you entered his service after your father was carded?—I did, sir.

Did he speak to you about the carding?—He asked me was such a thing done, and I told him there was.

How far is the window, through which you say you saw the prisoners from the door of the house?—It was out from my bed; and when I got up I looked out.

But how far is that window from the door?—A few feet.

Had the persons who came in, handkerchiefs upon their faces?—They had.

Then was it possible for you to see the faces of the prisoners?—They put the handkerchiefs down over their faces when they came in; but while the others were making way for them by breaking the door, these two raised their scarfs, and I could see their faces.

Could you have known them, unless you saw their faces at the window?—I would not.

Where were the rest of the party?—They were standing a piece off from the house, till M'Donough brought my father to them, and they got round him and carded him.

Did they keep the handkerchiefs upon their faces at that time?—They did.

Did they wear them when they went off with your father?—I do not know, for I did not see any near enough but M'Donough and Kearney.

Did they wear their handkerchiefs going away?—They did, sir.

A Juror.—Describe the manner in which

* Vide p. 21.

their handkerchiefs were on?—They had them over their hats and faces; and when they whispered, they threw them over their hats.

How can you tell whether it was M'Donough and Kearney came into the house?—I saw them at the window, and they came in, when the door was broke.

Can you swear it was the same two persons?—I can.

Did you quit the house that night?—I did.

At what time?—I went to look after my father, and could not see him.

Did you hear the voices of any of them?—I did not.

Was it the first or second time of your father going out, that you went out?—The second time.

Did you go out the first time?—No.

Why not?—Because there was a man with a sword, and he struck light out of the stones, and said, he would cut my head off.

Were these two prisoners armed?—They were.

In what manner?—M'Donough was armed with a gun, and Kearney had a sword or stick, I cannot say which.

Court.—When first you saw these people, what sort of a night was it?—It was moonlight, and the moon was then getting under a cloud, and it was going to rain.

A Juror.—Was the window glazed?—No; but sticks in it.

Could you easily see one or two men at the door?—It was not at the door I saw these men; they were just at the window.

How high is this window?—Not high.

Was it as high as a man's head?—It was not.

Did they stand opposite the window?—They did.

Did you know their faces?—I did.

How long is it since you first knew them?—Since I was five years old.

What time have you to serve Mr. Abercrombie?—Half a year.

Counsel for the Crown.—Have you any house to live in now?—I have not.

Thomas Soden, esq. sworn.—Examined by the *Attorney General.*

Are you a magistrate of this county?—I am.

How long have you been a magistrate of the county of Sligo?—Upwards of thirty years.

Do you know whether any disturbances have prevailed in this county for some time past?—There have, and for a considerable time.

Do you know of any description of persons assembling under a particular denomination?—Not from my own knowledge, but from general report and sworn informations I am acquainted with the matter.

Under what description have they assembled?—The lower order of the people have assembled under the denomination of "*Threshers.*"

Do they wear any particular badge?—They wear white shirts over their clothes, and handkerchiefs upon their heads.

Do you know a man of the name of Peter O'Neil?—I do.

Did he swear any information before you, and when?—He did, early in the month of September, either the 4th or 5th of the month, recently after the abuse he complained of.

Did he complain of any particular injury?—He complained of having received blows from a gun, from sticks and other weapons; and he showed me his back, which had been carded, and was then excoriated in a very severe degree. I heard of the occurrence, and heard that he was in Sligo: I came upon him unexpectedly: he was very reluctant, and it was with great difficulty I could get from him the circumstances.

Had any terror prevailed in the country at that time?—A considerable degree of terror prevailed, and does to this present moment.

Had any rewards been offered for persons giving information at that time?—I cannot exactly say, though I was at the meeting.

Did you offer O'Neil any reward at the time you took his information?—I did not offer the slightest reward, or hope of reward: I should have thought it improper: he was an unwilling witness; after he showed his back, he was unwilling to give any evidence: I wrote a summons, which I signed with my own name, and those of two other magistrates by whom I was authorized; and I served him with a summons to appear at a public meeting of the county; and then, rather than come forward in a manner so public, and so long before the assizes, he preferred giving the information privately before me; and he took me into a separate room, and gave me the information; and he said the terror he was in, if it should be known that he gave information, was the cause of his reluctance.

Court.—What appearance had his back?—It was all excoriated: all, except the extremity: it was torn very close: the left side of the shoulder was all one entire mass of red, and torn.

Where was O'Neil kept afterwards?—He was at his liberty for some time: I suffered him to remain for a month, and then sent for him again; examined him to see if his information was credible and consistent: he gave me the same account, and then I issued a warrant against others named in the information, having granted a warrant against these prisoners before. He then expressed apprehension for his safety, and he sold his property, and I sent him to the general of the district, where he has remained ever since.

Thomas Soden, esq. cross-examined by
Mr. Baker.

Why did you not act upon the information you received?—I acted upon it in part, but I did not know the man; his information went against a great many, and I thought it might be a great severity to apprehend them all, until I found him perfect in his recollection as to them all. I acted from motives of humanity.

Then he did not give such an account at first as you thought warranted you to act upon it?—He gave very clear testimony, but the charge was so enormous and against so many, that I wished to consider it fully, not knowing the man. I afterwards issued warrants against all he accused.

Did you hear of O'Neil before he came to you to give information?—Only from hearing of the attack upon him; but he did not come to me, I went to him.

John Irwin, esq. sworn.—Examined by the
Solicitor-General.

Do you recollect the meeting of the magistrates of the county for the purpose of advertising rewards to informers?—I do.

When was it?—There were meetings upon two successive days, on the 25th and 26th September.

Had there been any advertisements previous to that?—Not to my knowledge.

You are a magistrate of this county?—Yes.

Are you able to say what is the state of this county, as to tumultuous risings? were they frequent in September?—They were.

Have you seen any parties assembled?—I have.

With badges upon them?—Yes.

Describe in what dress they were?—They had white shirts, and bands upon their hats.

Are they known by any particular denomination?—They are commonly known by the name of "Threshers."

John Irwin esq. cross-examined by Mr.
Baker.

Were these rewards talked of at all before the publication?—I do not think they were, for the idea originated at the meeting.

[Case closed on the part of the Crown.]

DEFENCE.

Owen Sweeny sworn.—Examined by
Mr. Baker.

Where do you live?—At Carrowkeal.

How far is that from the house of O'Neil?—In the same town.

Did the "Threshers" pay you a visit on the night of the 2nd of September?—I cannot say, being no scholar.

Do you recollect the night O'Neil was carded?—I do.

Was it a dark or a bright night?—It was a bright night.

Had you any opportunity of seeing a party calling themselves "Threshers" that night?—I had, I saw a number of people at my own house.

Did you view them closely?—Indeed I did.

How long have you known M'Donough and Kearney?—Twenty years.

Was M'Donough or Kearney among that party?—Indeed I did not see them.

Upon your oath, having known them for twenty years, could they be among that party without your knowledge?—I viewed them closely, and did not see one of them, or I would have known them by their voices.

Did you remark any person particularly among them?—I did not.

Did you see any person carry a gun that night?—I did not.

Can you say whether the prisoners were there?—To the best of my opinion, they were not.

Owen Sweeny cross-examined by the Attorney
General.

You live very near Peter O'Neil?—I do.

Was there a party at your house?—They did not do any harm at my house.

They were a civil set of people that came to your house?—They were.

Had they white shirts upon them?—They had.

Had they any thing upon their faces?—They had not.

What did they do?—They did not do any harm, only called at my house, and swore me to keep down the clergy and tithes.

Had they any handkerchiefs upon their hats?—They had.

Was your door open when they came?—No.

Did they break it in?—No, I opened it myself for them.

How many of them were they?—A good many.

Were there thirty?—Very close upon thirty.

Upon your oath do you believe they committed any outrage that night?—I did not know of any.

Court.—Did you hear of any?—Only what O'Neil told me next morning. He said, they did not do him a hap'worth of harm.

Was it not known that they scored his back?—He told me they did him no harm.

Mr. Attorney General.—Did they get any money at your house?—No.

Did they ask for any?—They asked for some; I told them I had not any, and they went away.

What time was it?—After bed-time.

Was it near day-light?—No, it was after ten.

How far do you live from O'Neil?—Not past three acres.

Was it before they came to you or after, that they went to O'Neil?—I am told after.

Who told you?—Himself.

How did O'Neil know that they visited you?—Next morning he asked me, whether they had been with me.

Did they all go into your house?—No; but a good number came in.

And a good number staid out?—Yes.

You were a good deal frightened?—I was to be sure.

You did not know what kind of people they were?—I did not.

Were you glad to get rid of them?—To be sure.

Did you go out with them?—I did, a little way.

Did you talk with them?—I did.

Did you shake hands with them?—I did not.

How long were you with them?—About a quarter of an hour.

How many among them did you know?—Not one of them.

You opened your door for thirty men; you talked with them for a quarter of an hour; the night was bright: they had no covering upon their faces; and you did not know one of them?—Not one.

If there was any man among them whom you knew before, you would have known him then?—I would.

Where does M'Donough live?—In Sligo.

How far from Carrowkeel?—Two miles.

How far does Kearney live from that?—Two miles.

What business do you follow?—Mason work.

Do you know the people about Sligo?—I do.

Would you know any from that part, if at your place that night?—I think I would make a guess at them.

How soon after that night did you see M'Donough?—Not till I saw him in gaol.

How soon did you see Kearney?—I think I saw him at mass on Lady-day.

Had you any talk about "Threshers"?—No.

Was he an old acquaintance?—He was.

And you had no talk with him?—No.

What brought you to the gaol?—I did not go there; I only saw him from me in the street.

Did you speak to him?—Yes, through the grate.

Did any person desire you to speak to him?—No.

Did any person tell him what you could say?—No.

Did you mention to any person what you could say?—No.

Who summoned you?—Tom Frost gave me one.

Who gave you the other?—Jack M'Donough's brother-in-law.

What is his name?—John Hart.

Were the people who were at your house dirty or clean?—They were not dirty.

What sort of horses were they mounted upon?—No horses at all.

What sort of weather was it?—Good dry weather.

If these people came from a distance, they must have set out before it was dark?—I cannot say.

They were not upon horseback, nor dirty?—No.

If they were of your neighbourhood, you must have known them?—I think so.

Where was M'Donough that night?—How do I know?

Nor Kearney?—No.

And you never asked them?—No.

What family have you?—A son and daughter.

How old are they?—The boy is twenty, and the girl sixteen; but the boy was not at home that time; he has been twelve years in Dublin.

But the girl was in the house?—She was.

Is she here?—No.

Do you believe O'Neil's house was attacked that night or not?—I cannot say, the man told me they were with him.

Do you believe him?—I do not believe the half of what he said.

Can you say, why they did not put the handkerchiefs over their faces when they came to you?—I saw none of their faces.

They proposed an oath to be taken by you?—They did.

What was it?—Not to take any tithe from Mr. Crombie, or any other, but from the minister.

Was there any thing else in the oath?—No.

Was there any thing about the priest?—They wanted to keep down the church, and not to pay more than nineteen-pence half-penny for baptism.

Was that part of the oath?—It was.

Was there any thing about "Threshers"?—No.

Or keeping secret?—No.

A Juror.—Are you certain there was no other party out that night but one?—I cannot say.

Did you hear of any other?—No.

John Donougher sworn.—Examined by Mr. Baker.

Where do you live?—Near Cloverhill.

Is that near O'Neil's?—It is in the same quarter of land.

Did you see any party of men upon the night of the 2nd of September?—I did.

Where did you see them?—They rapped me out from my bed.

At what hour of the night was it?—I cannot exactly say; it was between two and three in the morning.

How were they dressed?—They wore white

shirts and white hats: they had handkerchiefs about their hats.

Did you see their faces?—I examined them at the door.

Have you known the prisoner M'Donough any length of time?—Since I was able to walk.

Do you know the other prisoner Kearney?—I do these ten or twelve years.

It was a bright night?—It was; but it rained very hard at that time.

Can you say, whether M'Donough of Kearney were of that party?—M'Donough was not in the party: I saw no man there so tall.

Do you know him extremely well?—I do.

And he has a remarkable face?—He has.

And he was not of the party?—Not to my opinion: if he was in it I would know him.

John Donougher, cross-examined by the *Solicitor General*.

How many persons were there?—I cannot say.

But you can guess?—About a score, or thereaway.

You saw them all?—A good many about the door.

Did you know any one of them?—Not one.

How long did you live there?—I was bred and born there.

If they came from that neighbourhood, you would have known them?—I would.

Then they were all strangers?—I do not know but they were.

You are quite sure M'Donough was not there; but you are not quite sure as to Kearney? Why not?—Because M'Donough is so remarkable.

It occurred to you, when you were looking at them, that he was not there?—I did not see him.

When did it occur to you, that he was not there?—I cannot say when.

Was it a month?—It was less.

Was it a week?—I cannot say.

Is not M'Donough a remarkable man, with a mark upon his face?—He is.

And easy to be known by any person who was acquainted with him for sixteen or seventeen years?—Yes.

You looked at all their faces?—No, not all: they would not let me.

But such as you did look at, you did not know?—I did not.

Then Kearney might be among them, when you did not examine them all?—To my opinion, he was not.

What is your reason for thinking he was not there?—It is my opinion.

But what is the ground of that opinion? There were two persons at least, whose faces you did not examine?—I do not know whether or not.

Was there any one man there, whose face you did not study?—I cannot answer that question.

If you have a difficulty about answering that

question, why did you say, there were some whose faces you did not see?—There were some I did not see: I am sure he was not there: if he was there, I would have seen him.

Then you did not see him?—No.

And you are sure he was not there?—To the best of my opinion he was not.

What did they do to you?—They rapped me out of bed: called me by my name, both christian and surname.

Then they knew you?—No, they did not; they were strangers.

How did they know your name?—How can I tell!

You got up?—I did; I answered to my name.

What did they say?—They demanded money.

Did you give them any?—Two tenpenny pieces.

Did they tell you for what they wanted it?—They did not.

Did they tell you it was for captain Thresher?—They said, *John the Thresher* was there.

Did they ask you to swear?—They did.

What?—Not to buy any tithe from Abercrombie or Kirwan; and I said, I would do every thing in civility, and would do as my neighbours did.

I do not ask you, whether you were actually sworn; but did the oath which they offered you, contain any thing about *John the Thresher*, and obeying his laws?—They talked of that.

And about not telling of him?—They started no such case as that.

Was this the same party that was at O'Neil's?—I cannot say; to the best of my opinion it was.

What is your reason for it?—You ask me and I answer what is just.

Did you ever see a Thresher since?—No.

Did you see any man of that party since?—No.

Would you know one of them, if you did?—I think not.

A Juror.—Had they any arms?—One gun.

Did you see any other arms?—There was a sword.

Did you see any other?—Only one sword and one gun.

Mr. Solicitor General.—Did you see the man who carried the gun?—I did.

Are you sure it was not M'Donough?—I am positive he was not; he was not near his size.

William Cole sworn.—Examined by *Mr. Baker*.

Where do you live?—At Windy Gap.

Is that near the house of O'Neil?—Within sixty perch of it.

Do you recollect the night upon which you heard O'Neil was carded?—I do; it was the night of the 2nd or 3rd of September.

D

Did you see any party of men assembled that night?—I did.

Did they go to your house?—They did.

The night was bright?—It was.

Did you open your door?—Not till they threatened to break it open.

How were they dressed?—In white shirts, with white bands round their hats.

Did you look sharply at those people?—They brought me out, and desired me to look at them.

Did you do so?—I did.

How many were there?—Fifteen or sixteen as I could perceive.

Did you look at them?—I did, for such a time as they allowed me—a few minutes.

You did examine them?—I did.

How long have you known M'Donough?—Thirty years.

And how long have you known Kearney?—Nine years.

From every observation you made upon that party that night, could you see whether M'Donough or Kearney were there?—On my oath, to the best of my skill and knowledge, I did not see them. I think, if they were in the party, I would have known them.

William Cole cross-examined by Mr. Sergeant *Moore*.

At what hour was this party at your house?—After cock crow.

Was it day-light?—No, it was between one and two o'clock.

Were you in bed?—I was asleep, and they rapped me up:—they told me if I would not open the door smartly, they would break it.

Did they tell you what they wanted?—They said, they wanted a little money to refresh *captain John* and his men.

What did you understand by that?—He told me, he was *captain John, the Thresher*.

What are *Threshers*?—I do not know.

You have not heard of them?—No.

Have you not heard of people rising in this manner?—They were with me on the Friday night after.

Did you hear of them since?—Not in our neighbourhood.

And you did not understand what he meant by the word *Threshers*?—Upon my oath, I did not.

The captain desired you to look at their faces?—He desired me to look at his men and he led me out in my shirt.

For what purpose did he take you out?—I cannot tell that.

You say, you viewed them to the best of your skill and knowledge; what skill and knowledge did you exert?—They were drawn up two deep in rank and file on the road opposite the door.

Then he brought you along the line?—No, only to look at the men, and he desired me to go in again.

Then you did not go along the line?—No, I was glad to get back.

How far did they extend?—About thirty-six yards.

Did you go to one end of the line?—No only to the door, and I got in again, when he desired me.

You did not go thirty-six yards from the door?—I did not go two yards from the door.

Did you go over to them at all?—I did.

Can you take upon you to swear you knew the face of any one man, who was there?—I cannot.

Had you an opportunity of seeing them?—I had not, because I was but a few minutes out of the door, when he ordered me in again.

And if any man charged you with knowing any of them, he would charge you with a falsehood?—He would: I could not see them.

Timothy Hart sworn—examined by Mr. *Baker*.

Where do you live?—At Ballindarrick.

Where were you on the night when O'Neil was carded?—In Jack M'Donough's house, and slept with him.

Where?—In this town.

At what time did you go to bed?—At night fall.

Had you occasion to waken during the night?—I had, in consequence of his child being sick, and his wife was sitting up on account of his being ill.

Was that the reason you slept with M'Donough?—It was.

Did you sleep much?—We did not, on account of the child being sick, and on account of persons passing to the fair of Ballymoat, and one of the children is since dead of the same disorder.

During the course of the night did you miss M'Donough out of the house?—I did not, I was kept awake by the children.

Were you kept awake the whole, or part of the night?—The whole of the night for I was not well myself.

Are you positive, that M'Donough was not absent from his house, during the whole of the night of the 2nd of September?—I am sure of it.

Timothy Hart cross-examined by Mr. *Attorney General*.

How far is your place from the town of Sligo?—About eleven miles.

Do you know Peter O'Neil?—I do not; I never saw him till this day.

How far is your place from his?—I cannot say.

Were you ever at Windy Gap?—I was not.

Are you positive?—According to my knowledge I was not.

What is your business or trade?—I have no trade.

Nor business?—I am a farmer.

What land do you hold?—My father holds six acres of land and a mill.

Do you live with him, or have you any farm of your own?—I have no farm of my own.

Have you any property of your own?—No.

Are you married?—No, sir.

Have you any family?—I have some brothers and sisters; my father and I make no difference.

What mode have you of maintaining yourself?—My father maintains me.

Of what age are you?—Twenty-three.

When did you first hear any thing of these *Threshers*?—I cannot say.

When did you see any of them?—I never saw them but one night, and then they were at a distance from me.

Do you know of their tendering oaths to any person?—No.

Did you ever hear of any such thing?—I never did.

Did you ever know of their tendering oaths to any person?—I knew nothing of them.

Did you ever hear of their tendering oaths?—I know nothing at all about it.

If you understand the question answer it?—Upon my soul, I do not understand it.

Did you ever hear of their offering oaths to any person?—I did not.

Or of their making any person swear?—I did not.

Did you never hear any person speak of their swearing?—No.

What brought you to Sligo on the 2nd of September?—I was there a week before.

What connection is there between you and the prisoner M'Donough?—My sister is married to M'Donough.

Was John M'Donough at home the entire of the week?—He was.

Can you swear he was at home every night in the week?—I can.

Were you kept the entire week awake by the children?—By unlocking the door, I would know of his going out.

Did not you swear he could not go out any part of the week?—He could not.

Did you sleep any other part of the week there?—I did.

Was the child ill the entire week?—It was, —they were all sick together.

And they kept you awake the entire week every night, as much as the night of the 2nd of September?—There were people sitting up.

Upon your oath did you sleep at all that night?—I did sleep; but by unlocking the door I would know who went out.

Then whether you were asleep or awake, you would know if any person went out?—I would.

Did you sleep at all that week?—I did.

Did you at any time sleep long enough for any person to open the door?—He could not have left the house.

Did you, during the entire week, sleep so as that any person could unlock the door?—He could not go out.

Jurors.—Did you sleep any night that week?—I was awake the entire of that night.

Did you sleep any the first night?—I did.

Did you sleep any the second night?—I did not, on account of the children.

Then you slept every night of the week, but the 2nd of September?—I did.

And why not that night?—On account of the children being unwell.

Mr. Attorney General.—Is there a lock upon the door?—There is.

You said some time ago, that the people going to the fair kept you awake?—So they did.

They must have made a great noise?—They did.

They were riotous people?—No, but they were noisy; they were not very noisy.

But they were sufficiently noisy to prevent people from sleeping?—Yes.

And still the noise they made was not sufficient to prevent you from hearing the door unlocking?—No, on account of the children; and the wife sitting up, kept me awake.

Did she sit up other nights?—She did.

And yet you slept those other nights?—I did.

When did it first occur to you, to recollect, that you remained awake upon the night of the 2nd of September?—Because the fair of Ballymoat was the next day.

Was there any thing particular respecting that fair to make you remember being awake that night?—I cannot say.

Did any of the persons passing to the fair come into the house?—No.

Who were in the house beside you?—M'Donough, his wife and children.

And his wife sat up?—Yes.

And you slept with him?—I did.

Did you sleep with him on other nights?—No.

Then as there were no other persons in the house, why did you leave the bed you previously slept in, and go to M'Donough's bed upon the night of the 2nd of September?—Because I thought his bed was better, and the children were not lying quiet.

You said, his wife sat up every night. Do you now say, she sat up every night, or not?

[The witness seemed much agitated, and would not answer.]

Mr. Attorney General.—Did his wife sit up every night, or not?—She did.

And you slept by yourself every night, save upon the 2nd of September?—I did.

And upon that night you went to M'Donough's bed, because the wife was sitting up. How do you account for that?—I do not understand the question.

I shall repeat it, and beg of you to consider the situation in which you are. You say, that on the 2nd of September you slept with M'Donough?—Yes.

And the reason was, because his wife was sitting up?—Yes.

And upon the other nights you slept in another bed?—Yes.

Why did you not stay in the same bed?—Because I got worse upon that night, and M'Donough invited me to his bed.

There was no person in the house, but M'Donough, yourself, his wife and children?—There was not, and I told you so before: I have no more to say.

Was there any person attending the children, or helping to take care of them?—I saw no person up with them that night.

But did you see any person there, except those you mention?—There was not.

Does your brother-in-law ever go to the fair of Ballymoat?—I do not know as for that.

How soon did you leave the house after the 2nd of September?—I did not leave it until the Saturday after.

What kept you so long from your father's house?—I was unwell, and advised to stay at Sligo.

Did any doctor attend you?—No.

Did any doctor attend the children?—I cannot say.

Did any apothecary attend them?—I cannot say.

When did the child die? was it while you were there?—No.

What was the disorder with which it was attacked?—The chin-cough.

You said all the children were ill. Did they get any medicine?—I cannot say.

Did you see them take any?—I did not.

Who buried the child?—I was not there.

Did any person come into the house upon the night of the 2nd of September, to ask about the children?—Not after we lay down.

Did any one before that?—There did, several.

Who were they?—I cannot tell, being a stranger.

You do not know one of them?—I know them by eye-sight, but not their names.

How many brothers have you?—Two.

Where were they at this time?—At home, at my father's.

Are they there now?—They are.

Where did you come from this day?—From home.

Where did you stay last night?—In M'Donough's house.

Whom did you see there this day?—The neighbouring people coming in and out.

Do you know the name of any person you saw there this day?—I do.

Do you see any of them here?—I do not.

Have you been in court since this trial began?—I have.

Had you any conversation with any person, as to the evidence you were to give?—I had not, except with my attorney.

Who is he?—Mr. Davy.

Is he your attorney?—No, but the attorney.

Have you employed him in any case, ex-

cept this?—He is the attorney in this business.

Is not M'Donough's house out of the way from Sligo to Ballymoat?

[The witness would not answer this question.]

Mr. Attorney General.—When did you first hear of the carding of O'Neil, and that M'Donough was charged with it?—I heard it the next day.

Did you hear then, that M'Donough was charged with it?—No, but that it happened.

When did you hear that M'Donough was charged with it?—I cannot say, there were flying reports.

But when you heard of the attack upon O'Neil, you remembered that it was upon the night, during which you were kept entirely awake?—I remarked it, because of the fair, the following day.

Though you had not heard of the charge against M'Donough?—No.

When did you see your sister?—This day.

Had you any talk with her about the evidence you were to give?—I had.

Since your sister's marriage, did you ever sleep in the same bed with M'Donough at his house, except upon the 2nd of September last?—I did.

When?—I cannot call to mind.

Was his wife in the house at that time?—It was three or four years ago.

How long has he been married?—Fifteen or sixteen years.

Did you ever sleep any night with him, besides that of the 2nd of September?—I did.

Was your sister in the house at the time?—Yes.

Where did the children sleep?—In the same bed, but I lay against the wall.

Do you mean to say, that you and your sister and her husband slept in the same bed?—Yes.

A Juror.—Did you ever sleep with M'Donough before the 2nd of September last?—I did.

Where did your sister sleep upon that night?—In the same bed.

Mr. Attorney General.—Was there any other bed in the house at the time?—There was.

Why did you not sleep in the same bed with him from the beginning of the week?—Because I got unwell the same night.

Where did you sleep upon the night of the 3rd of September?—At M'Donough's.

In the same bed with him?—I did not.

Did you often sleep with him?—No.

Did you sleep with him any night after the 2nd of September?—No.

Nor any night before?—I did.

You are unwell?—Yes.

Have you been growing better or worse since September?—I am getting worse.

Were you better or worse upon the 2nd of September, than you had been before?—I was worse.

And the cure you adopted for your sickness, was to remove from your own bed to M'Donough's?—Yes.

What physician advised you to go to Sligo for your health?—Dr. Shields of Ballyshannon.

What persons reside now in your sister's house?—My sister, and her children.

Is there any person to assist them?—No.

Dennis Lynch sworn.—Examined by Mr. Baker.

Where do you live?—At Windy Gap.

Is that near O'Neil's?—Yes.

Did you see the party, called Threshers, upon the 2nd of September last?—I did.

How many of them were there?—About thirty.

At what time of the night did you see the party?—I cannot ascertain the hour: I was after sleep; it was pretty late.

Did they come to your house?—They did.

Did you go out?—I did not.

Was the night bright?—It was, but rather cloudy.

Did you make any particular observation upon them?—I made this observation; they were drawn up at a distance of sixteen or twenty yards from the house.

Was the door open or shut at that time?—It was open; I was obliged to open it.

Were you so circumstanced, as to see them?—Two of them, singly by themselves, came to the door; they asked me not to take my tithe from Abercrombie, or Kinselagh.

Did they say any thing else?—My wife took a trembling; they bid her not be afraid, and they demanded money.

Did you view the party particularly?—I did, at the distance they were from me; but the two, who were at the door, appeared to be the best and ablest men of the whole party.

Were they armed?—One was armed with a gun.

Upon your oath, was M'Donough or Kearney among that party on that night?—Upon my oath I think not.

Have you known them a long time?—I have.

How long?—I have known M'Donough twenty-seven years.

His person is remarkable?—It is.

He is a very tall man?—He is.

And you say, that neither M'Donough, nor Kearney were of that party?—I think I can say so: no man of the party was so gross as either of the prisoners.

Dennis Lynch cross-examined by Mr. Sergeant Moore.

What time of the night was it, when the party came to you?—I cannot ascertain; but the night was pretty far advanced; I had slept before they came.

How long did they remain with you?—I cannot say.

How long do you compute?—About a quarter of an hour.

How far before the others were the two men advanced?—They were grosser than any other.

But how far were they from the others, who were upon the road?—From fourteen to twenty yards.

How were they ranged?—They were drawn up in a line.

How many deep?—Not more than two; nor am I certain there were two itself.

How were they dressed?—In white shirts.

Had they any thing on their hats?—They had.

What?—White bands.

What had they in their hands?—Do you mean the party on the road? I could not see.

Can you say, whether they had any thing or not?—If they had they disguised them: I did not see them.

Did you speak to any of them upon the road?—I did not.

Did you cross the road?—I did not leave the door.

Did you go outside of the door?—I did not.

Did you light a candle?—I did not.

M'Donough and Kearney are large heavy men?—They are.

Did you know M'Donough well?—I did.

How soon after that transaction did you see him?—I do not know.

How soon do you think?—Not for two or three days.

When did you see him before that night?—The day before.

Did you see him on that very evening?—I did.

What appearance had he then?—Nothing more than he always had.

Had he any thing in his hand?—He had a gun: he came up to me at the garden where I was.

That was the evening of the 2nd of September?—It was.

You asked him where he had been?—I did: he said he had been at Carrowgiveness; and I wanted him to stay, but he refused, and went out of my sight at a considerable distance on the road to Sligo.

What time of the evening was that?—It was a little before night.

Do you know O'Neil?—I do.

Did you hear he was attacked that night?—They said so.

Was he not carded?—He did not appear like a man that was carded; he might have been carded.

Did you not hear that a number of persons have been accused for this business?—I did.

And persons from Carrowgiveness?—Yes.

Timothy Hart called again.—Examined by Mr. Attorney General.

Did you dine at M'Donough's house on the 2nd of September?—I did.

Did any other person dine there?—Yes.

Who?—himself and his wife:

At what time did you dine?—I cannot tell.

Was it light or dark, when you dined?—It was day-light.

Was it near dusk or earlier?—It was near dusk.

Did you sit any time after dinner, or go to bed immediately?—We went to bed at night-fall.

Did M'Donough go to bed at night-fall?—He did.

Did he go out after dinner, and before he went to bed?—He did not.

Had he any fire arms?—I did not see any.

Had he a gun in his hand that day?—I did not see it.

Was he in the house with you all that day?—I cannot say.

But after dinner, till bed time, he did not go out?—He did not.

How long before dinner was he within?—I can't say, not being a judge of that.

Michael Mullins sworn.—Examined by *Mr. Baker*.

Do you know the prisoner M'Donough?—I do these sixteen years.

Do you recollect the night of the 2nd of September?—I do.

Did you see him that day?—I did.

Where?—I was going to Ballymoat fair, and saw him near Windy Gap.

At what time?—A little before night, going to Sligo.

Michael Mullins cross-examined by *Mr. Solicitor General*.

Had he a gun in his hand?—He had.

Was it near dusk?—It was not very near dusk: it was dusk when I was four miles from town.

How near town did you meet him?—About a mile from this town.

Could he have been in this town before it was dusk?—He could. For ten years past I have been afraid of O'Neil and could not buy a beast for fear he would steal it from me.

How much money do you owe him?—I do not owe him two-pence.

How much does he claim from you?—Half a guinea; but I do not owe him a fraction, and never will pay him, because he stole seven times as much of my grass.

Henry Watts sworn.—Examined by *Mr. Baker*.

Do you reside near this town?—I live in the very place where this man and woman reside.

You are their landlord?—I am son to their landlord.

Had you any conversation with O'Neil's wife subsequent to the 2nd of September last?—I had.

What was it?—I asked her, did she think these men would hang. "I can't say," says she. "Molly," said I, "they say that you

swear against them, that they were in it." "No," said she, "I only swore that I knew their voices."

Had you any further conversation with either O'Neil or his wife?—I never had, except at that time, and she told me she would swear against Jack M'Donough and Billy Kearney.

Did she say any thing else?—No.

Did she talk of any inducement she had to do so?—No, sir.

Did she talk of rewards?—No; but O'Neil, at the time he went to sell his lease to my father, said, that there was a reward for any person, who would tell of them people.

What time was that?—At the time it was said he was carded.

Did he seem to intimate directly or indirectly that he expected any part of this reward.

Mr. Attorney General.—The question is not strictly regular, but I do not object to its being answered.

Witness.—I could not know by him, that he did. I asked him down to the meadow, but he said, he must be home: I told him, I would give him half a pint of spirits to assist in the meadow, but he would not stir.

Henry Watts cross-examined by *Mr. Attorney General*.

Have you not heard, that it was upon the 25th of September the magistrates offered rewards for discovery?—I cannot say; it was after this man was carded.

How long have you been a yeoman?—Four or five days.

Do you believe that any rewards were proposed until the 25th of September?—I can't tell, except that he told me.

Was that after the 25th of September?—I can't say.

He has been obliged to leave that part of the country?—He has.

Your father has not been under that necessity?—He has not.

Was not your father in treaty with O'Neil for his lease?—Not that I know of.

But he has bought it?—He has.

For how much?—For ten guineas, or 10*l*.

Had he not formerly been offered 100*l*. for it by your father?—Not to my knowledge.

Would not the farm be worth more than 10*l*. to a man who would stay in the country?—It would.

So then an advantage was taken of this man's situation?—No; for my father did not know of the transaction.

Did you not know of it?—I did.

Where was your father at the time the bargain was made?—In this town.

Where did he live at the time?—In Boyle.

And he now lives upon these lands?—He does.

How many acres are there?—Four acres.

How many years of the lease to come?—Ten or twelve years.

What is the rent?—Six pounds.

How near this town?—A mile and a half.

Would he sell that interest for 50*l*.?—I can't say.

Would you?—I would not.

Is there not a bog along with the four acres?—There is.

Is not that more valuable than the rest?—I can't say.

Would you sell it for 70*l*.—I would not.

And your father has bought it for 10*l*. from this unfortunate man?—He bought it at his own request.

That was after he was carded?—It was.

George Rochfort sworn.—Examined by Mr. *Baker*.

Do you know O'Neil, the prosecutor?—I do.

Had you any dealing with him?—I bought a cow from him.

Did he owe you any money?—I owed him a balance: I bought a cow, and had not the entire money: he took my word for the remainder: I was to pay him in a few days: I gave him two guineas in gold, and he was to give me 5*s*. 5*d*. in change. He said, if I would take his word, as he took mine, he would pay me that day eight days. He took his oath he would pay me that day eight days. I did not see him for a fortnight, when I asked him, why he did not come. He said, he had not the money. I asked him had he the money then. He said, not. I said, I would bring him to justice. He said he would borrow it; and finding I stuck to him, he took the money out of his pocket and paid me.

George Rochfort cross-examined by Mr. Sergeant *Moore*.

How long ago is this?—Nine years; and some of the neighbours hearing of this, took advantage of it, and summoned me.

Laurence Summerton sworn.—Examined by Mr. *Baker*.

[N. B. When this witness came upon the table, he spoke Irish; in which language he declared he could not speak English: but, after some expostulation, he gave his testimony in English.]

Do you know O'Neil, the prosecutor?—I do.

Do you recollect his having been charged with taking leather at any time?—I do.

Whose property was it?—It was Bryan Tighe's.

He denied it, to be sure?—He did.

Did he deny it in any particular way?—He denied his having taken it, though he gave it to his wife forewent my face, and his wife hid it, and it was taken from her.

Where was this?—Near Tighe's house.

Did he take any oath about it?—No, he did not.

Did he steal it?—He did.

Did they return it to the owner?—Not till

I told him of it. Tighe's wife took the leather from O'Neil's wife and beat her well with it.

Laurence Summerton cross examined by Mr. *Attorney General*

Did you ever hear that O'Neil swore he could not speak English?—I did.

And that he spoke good English after? was he not a perjured fellow when he did that?—He was.

And you took an oath that you could not speak English?—No, I was not sworn, when I said that.

You were only near it. Where are Bryan Tighe and his wife?—They are here.

How long ago was this transaction of the leather?—It was a good many years ago.

Was it twenty years ago?—No.

Was it ten?—I can't say.

Was O'Neil ever tried for it?—No.

You saw him steal it publicly in the market?—No, but in the house.

It was before your face?—He thought I was not looking at him. If he knew I was, he would not steal it.

You were standing by?—I was at the far side.

Were you in the same room?—Yes.

And he gave it to his wife?—He did.

Did you hear of O'Neil's house being visited by people in white shirts?—I heard they were there, but did not hear their dress.

Did you hear one of them had a gun?—I heard some way or other one of them had a gun.

What is your situation in life?—A labourer.

Who employs you?—No one at all.

Have you any land?—Yes.

How much?—Two acres and a half.

Do you pay rent?—I do, to sir Percy Gethins.

Did you hear, that persons are going about swearing people in the country?—I do not know whether they are or not.

James Murphy sworn.—Examined by Mr. *Baker*.

Do you know Peter O'Neil?—No, I was at the fair of Banada, and a man came up, and said his name was O'Neil, to sell a cow, it was taken from him.

But do you know him?—I do not know the man.

DEFENCE FOR WM. KEARNEY.

Mary Mullins sworn.—Examined by Mr. *Baker*.

Do you recollect the night upon which O'Neil was said to be carded?—The next day I heard the report of it.

Where did you pass the night of the 2nd of September?—In William Kearney's house, at Magherabuoy.

In what part of the house did you sleep

that night?—I slept nearer the door than he did.

Was it in the same room with him?—No, he slept in a closet inside the room where I slept, and I slept nearer any door of the house than he did.

Mr. *Baker*.—Did you sleep in the room next adjoining the closet in which he slept?

[It was suggested by Mr. Attorney-general, that this mode of interrogating the witnesses was leading, and consequently irregular; he hoped it would be avoided.]

Witness.—I did.

At what time did you go to bed?—Between nine and ten o'clock.

Are you a servant of Kearney's?—I had been serving in the house.

Who slept in the bed with you?—Two children.

Were they restless during the night?—They were; one of them is still weak.

In consequence of that were you enabled to sleep much in the night?—I was restless all night.

Do you recollect at what hour Kearney got up in the morning?—Not till after every one in the street was up.

At what hour was it?—Between eight and nine.

Was it possible for Kearney to have gone out of the house without your knowledge, and to have remained out for any length of time?—It was not.

Did he quit the house during that night?—Upon my oath, he did not, upon any account.

Are you related to Kearney?—I am not a drop's blood to him in any way.

You went there as a sempstress to him?—I did.

Mary Mullins cross-examined by Mr. *Solicitor General*.

How near Sligo does Kearney live?—A small half mile.

Where do you live?—I have no certain place of living.

Where did you sleep the night before the 2nd of September?—In his house.

How long before that did you sleep there?—From Midsummer.

And how long since?—Ever since.

Have you been employed there ever since?—No, but his wife is desolate.

How so?—Since this man was taken.

But before that, you say you were there, though neither a servant, nor a relation?—I was there.

How came you there?—Sewing and knitting.

All that time?—Yes.

How many does his family consist of, besides his wife? has he a servant girl and children?—Yes.

What is become of the servant girl?—She is here.

Were any other persons there?—Another woman and a man.

What is the name of the servant girl?—I forget her name. It is Margaret.

What is the name of the woman?—Winny Magarry.

What is the name of the man?—One Kearney.

Is he any relation to this man here?—His brother.

How long had the child been sick?—Four or five days.

Did the child keep you awake on other nights?—Every night she lay with me.

You did not close your eyes all night?—I did a little.

How long before that night did the child sleep with you?—Four nights before.

Why did it not sleep with you from the beginning?—I do not know.

Why did it sleep with you then?—Because the mother preferred me.

What were you paid?—So much a month.

How much?—Eight shillings and eightpence a month.

Where did you live before that?—At Aghamore.

You have no settled place of living?—No.

You have a brother?—Yes.

He was examined here to-day?—He was.

Kearney the prisoner went to bed early?—He did.

Do you know M'Donough?—I do.

How long?—Since I was a child.

Did you ever see M'Donough at Kearney's?—I never saw him there.

Are you and your brother upon good terms?—Yes.

Did he ever tell you he was to prove something for M'Donough?—No.

Nor did you tell him, that you were to prove something for Kearney?—No.

When did you last see him?—I saw him a while ago.

Did he know you were to be a witness?—I can't say.

Did you know he was to be a witness?—I did not.

You did not mention it to him?—No.

Did you ever talk of being a witness for Kearney, or what you could prove?—I told every one of it.

Where were you for the last two hours?—In the guard room.*

Was your brother there?—He was.

You never talked to him of being a witness for the prisoner?—No.

Did you ask him what brought him there?—I did not.

Nor did he ask you why you came there?—No.

In what part of the house did Kearney's brother sleep?—He slept in the kitchen.

* This was a room in the court-house, occupied by the yeomanry on duty, as a guard-room; where the witnesses were accommodated during the trials. *Orig. Ed.*

How near the room where you slept?—It was off the kitchen.

And Kearney's room was off that?—It was so.

Then there was a room between the kitchen and the room where Kearney slept?—There was.

Where did Margaret sleep?—In a settle-bed, where the other woman slept.

In what room?—In a closet.

Was that in the same closet with Kearney?—It was.

Did the hall-door open into the kitchen?—It did.

And Winifred Magarry, and Margaret and Kearney slept in the same place the night before?—They did.

Did they sleep in the same place from Midsummer?—No, the servant girl did.

But not Winifred Magarry?—No.

When did she come there?—That night.

For the first time?—Yes.

How long did she stay?—Only that night.

What brought her there?—She lived in the street, and had a falling out with her husband, and came there for protection.

And the child kept her awake the whole night?—No, it did not sleep with her.

Did her husband come for her?—He did, but was not let in.

What became of her the next day!—She went home.

Are they here?—They are about the court-house.

Is Bryan Kearney in the guard room?—He is.

Winifred Magarry sworn.—Examined by Mr. Baker.

Do you recollect the night when it was said O'Neil was carded?—I do.

Did you happen to go to the house of William Kearney that night?—I did.

At what hour?—Between eight and nine.

What was the reason of your going there?—A little falling out that came between me and my husband, and I was afraid he would beat me, and I went there.

Did you stay long in the house after you went there?—I staid till morning.

Did you go to bed?—His wife bid me go to bed; I lay down, but did not take the clothes off me, but did not sleep, being so anxious about my cabin, and the misunderstanding between me and my husband.

Where was the bed?—In the same room with Kearney and his wife; and I was lying in the same settle-bed with another girl, near Kearney's bed: I did not quit the bed, except twice during the night, when I went to the kitchen to light my pipe.

When you went to the house of Billy Kearney, was he in bed, or not?—He went to bed before my face: he asked me, what brought me there; for he said, if I let my husband alone, he would not touch me.

You say, you did not sleep?—I was awake the whole night.

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Was there a woman of the name of Mullins there?—There was.

Where did she sleep?—In the room adjoining, with two children.

You had an opportunity of knowing whether the children slept well?—They were very restless all night; they wanted drink.

Was it possible for Kearney, the prisoner at the bar, to have left his house unknown to you?—No man, woman, or child, could have left it without my knowledge.

Did he leave it?—He did not rise, till it was time for every one to rise.

Did you see him get up in the morning?—I did.

At what hour?—Six or seven o'clock.

So you are positive he did not quit the house, during the whole time you were there?—In truth I am positive. When I went to scour the churn for milk in the morning, I heard that O'Neil was carded, and Kearney did not leave his house that night.

Winifred Magarry cross-examined by Mr. Attorney General.

What business does your husband follow?—He is a carman.

What business do you follow?—None.

What did you quarrel about?—He wanted to take whiskey; I would not let him, and we fell out about it.

Did you ever hear of a person of the name of Devanny, being charged as one of those who carded O'Neil?—I did hear of a man of the name.

Is he related to your husband?—No.

You and your husband quarrelled about whiskey?—We did; and it was not the first or second time.

Did you always go to Kearney's house upon these quarrels?—I did that night, and ever since.

Did you ever go there before?—I did.

How long before?—I can't tell.

Why did you go there?—To avoid flogging, I was afraid he would beat me.

Did he ever go there to look for you?—He did, and he came to the door and desired me to go home, and said he would not touch me.

Where is he now?—He is here.

Where were you when Mary Mullins was examined?—I was in the corner yonder.

Could you hear what she said?—I could not.

Do you know John M'Donough?—I do not.

Do you know Michael Mullins?—I do; I used to buy noggins from him.

Did he visit Kearney?—He might.

Did you ever see him there?—I did not.

Do you know Mary Mullins?—I do.

Has she any children?—I do not know; she had not them there, if she has any.

Were there any fire arms in Kearney's house?—I never saw any, only the tongs.

Or any sword?—I did not.

Did you hear any talk of the Threshing?—I did hear talk of it.

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Did you ever see any of the Threshers?—I never did.

Did they attempt to swear your husband?—They would not trust him, for fear he would tell, when the whiskey was in him.

Were they at Kearney's house?—I can't say.

What hour was it in the morning, when you heard of the carding of O'Neil?—Troth early enough.

Was it after you went home?—It was: I went home for a can to milk the cow, and that is early.

Who told you?—Mary, passing the road from the bog.

And you heard them say O'Neil was carded?—I did.

Did they say any thing else that happened at Windy Gap?—They did not.

Did they speak of any other house being attacked?—They did not.

Had you seen your husband before that in the morning?—I did.

Had you made up the quarrel?—No, I left him at the fire-side.

Did you tell him what you heard?—Troth, I would not make so free with him.

When did you mention to any person that you were to give evidence?—I did not tell any body.

Did you tell any body what you could prove?—I did to every body that asked me.

Were you and Margaret and Mary and Kearney's brother brought together in company since that night?—No, except I went in to light my pipe, but nothing private passed.

Had you any conversation with Kearney's brother, as to the evidence you were to give?—I had not.

Had you any conversation with your husband about it?—I told him, I was to go in it, and he did not hinder me.

How soon after the 2nd of September did you hear that Kearney was charged with carding O'Neil?—A good while after.

Joseph Hodson sworn.—Examined by Mr. Baker.

Do you know O'Neil, the prosecutor?—I know him by that name.

Did you know him by any other name?—I did.

When?—Between ten and eleven years ago; there was a gentleman of the name of James Johnson, whose daughter went off with her first cousin of the name of James Johnson, and had a child by him; and this man, O'Neil, kept them *in cog*, and passed himself by the name of M'Donough.

Is he the same man, who now goes by the name of O'Neil?—He is.

At what time did he assume the name of O'Neil?—When those people returned to their friends and the child died, he assumed the name of O'Neil.

What more do you know of him?—I keep a public-house, and he used to make off with the reckoning: he used to drink there and run

in debt, and pretend to fall asleep, and when stopped, he would take a book, and swear he would pay me that day week, and would not pay me.

Would you believe him upon his oath in a court of justice from his general character?—I would not.

Joseph Hodson cross-examined by Mr. Sergeant Moore.

Where do you live?—I was born in this town.

Do you not believe, that he knew this family of Johnson, that he harboured the young couple who had fled from their friends, and changed his name to avoid their inquiry?—I believe so.

Was there not some degree of delicacy in that?—I cannot say, but believe that was the reason.

When you say he made off with the reckoning, you do not mean that he scrambled up the money of others and made off with it?—No, but he sconced me.

Did you ever see him in a court of justice before this day?—No.

Did you ever see him charged in a court with robbery or any other offence?—I never did.

Did you ever hear of his taking an oath in a court of justice before this day?—No.

Did you ever hear of his making an information before a magistrate until this transaction?—I never did.

Did you ever hear of his taking a legal oath in the presence of a court of justice, or a magistrate?—I never did, and I make no doubt but he did not.

Then your disbelief does not arise from any thing that he ever swore in a court of justice?—No.

Is O'Neil the only debtor you have in your public house?—No, there are one thousand.

Is it your opinion, that every man who is indebted to you is undeserving of credit upon his oath?—No, but he took an oath to pay me, and would not pay me.

You keep a public-house in this town. Do you expect popularity by the evidence you give?—I am not under two-pence compliment to any of them.

Do you know any other man, who knew O'Neil to pass by the name of M'Donough?—There may be many, but I do not recollect them.

You have been here all day, and heard witnesses speak to transactions ten and eleven years back, and not a man of them called him M'Donough?—I can't say for that; I did not hear them.

Do you know any other man, except yourself, who was acquainted with him by the name of M'Donough?—I cannot.

Has he not been seventeen years in this county?—I can't say.

Was not his son born in this county?—I heard he was.

Was he not known by the name of O'Neil?

That was the first name I knew him, but James Johnson told me his name was M'Donough.

Court.—How long did he go by the name of M'Donough?—As long as he had this couple there.

How long was that?—Twelve months.

How do you know that?—From James Johnson.

[Defence closed.]

SUMMING UP.

Lord Chief Justice *Downes*.—Gentlemen of the Jury.—The prisoners stand charged before you upon four several indictments [which his lordship stated]. They are all laid upon the same day, the 2nd of September last. In the first indictment there are several charges, which the evidence, if you believe it, plainly supports, and each of these charges is capital. That indictment seems to be the most material: the same evidence applies to all the others; but the evidence goes completely to the first. Gentlemen, with respect to the second indictment, if you believe, that the entry into the house was made with an intent to take any of his goods and chattels, without his consent, that indictment is also supported. But the intent must be to take some of his goods and chattels without his consent. The third indictment is for a robbery in the dwelling house; and the circumstances go fully to support that charge, if you believe, that they took the tenpenny token from him while they were in the house. The fourth indictment contains charges also completely supported by the evidence, if you believe it, and your belief of it must rest with your own consciences. With regard to this last indictment, you will observe, that the evidence goes to show, that this party provided an instrument of punishment and that they inflicted cruel torture with it. If you believe that act was done with the intent to compel O'Neil to enter into and become one of the association of Threshers, then that charge is supported. With regard to the other counts in the fourth indictment, there is evidence, that the man acknowledged to have two tenpenny pieces only, and they were produced: what became of them does not exactly appear;—but there is this farther evidence applying to the latter branches of the fourth indictment, that he offered to send them money wherever they desired him, and they appointed a place to which four tenpenny pieces were sent; and it deserves your consideration, whether this charge is not also established against the prisoners.

Gentlemen, having thus stated the charges which are made against the prisoners at the bar, it is my duty to advert to the voluminous evidence which has occupied your attention during the whole of this day; and the case will depend upon the credit which you shall be of opinion, the witnesses for the crown deserve.

Peter O'Neil, his wife and son, all positively identify both the prisoners as acting in the outrages described to have been committed. These three witnesses state, that the house was attacked by a number of persons demanding money in the first instance, to refresh captain Thresher; and, gentlemen, that important fact of the outrage upon the house, does not depend merely upon the testimony of the witnesses for the crown, though three of them concur in speaking to it; but other witnesses, two respectable gentlemen, speak to it, and four of the witnesses for the prisoners show, that similar descriptions of people were, with a similar object, assembled at other houses, close to O'Neil's. Four or five of the witnesses for the prisoners all agree, that a similar party with a similar object, in support of the common cause of the Threshers, on the very same evening of the attack upon O'Neil, was in the same neighbourhood, doing the very acts which O'Neil and his family describe.

[His lordship then stated the evidence minutely from his notes, and made occasional remarks.]

As to the fact of its being a moonlight night, all the witnesses for the prisoners, as well as those for the crown, agree in that circumstance. With regard to the gun, you, gentlemen, may recollect, that not only O'Neil swore to M'Donough having a gun that evening; but two witnesses for M'Donough himself, prove him to have had a gun in his possession that very evening. Peter O'Neil was cross-examined, with a view of bringing forward evidence to weaken his testimony; and if it has that effect, the prisoners have made a good defence. He said he did not go by any other name than that of O'Neil, upon which I shall observe, when I come to the testimony of the witness who was produced against him. Many circumstances inquired of by the cross-examination of O'Neil and his wife, are material for your consideration; because they show the great industry which has been used to examine into the history of these people, for the purpose of impeaching their credit: whether it shall have that effect is for you to determine. By the testimony given by witnesses upon the part of the crown, many of the capital charges are supported; and it will be for you to say, whether the testimony of the witnesses for the prisoners has had the success of doing away the evidence for the crown; all agreeing, positively, as to the identity of the prisoners, and as to the facts stated to be committed by them. The evidence for the prisoners goes to show that they were not of the party; and one of the witnesses for the prisoners swears, he does not believe that O'Neil's house was attacked; how far that declaration goes to destroy the credit of that particular witness you will determine, when you find all the other witnesses concurring in the fact, that not only O'Neil's

was attacked, but that other houses in the neighbourhood were attacked in the same way.

Gentlemen, you are to determine, upon the whole of the evidence, whether the prisoners, or either of them be guilty or not. Without again going through the charges minutely, I may tell you, that if you believe the evidence of Peter O'Neil, his wife, and his son, capital charges are made out against both the prisoners. The fact of disturbances prevailing in the county, is established by the testimony of two magistrates; and there is abundant evidence, that even on the very same night, and in the very same neighbourhood, similar enormities were perpetrated: it is even made part of the defence of the prisoners, and therefore you cannot doubt, that assemblies of an illegal nature, calling themselves Threshers, have existed. As to whether any party of them visited the house of Peter O'Neil, you will say what your judgment is. One witness says, he does not believe they were there; but you will determine, whether he has discredited himself. All the other witnesses show, that similar facts were committed; that O'Neil's house was visited by them, is not only probable, but is positively sworn to by him, and indeed seems to be a fact not doubted. All the witnesses, save one, agree that it was attacked in the way he states; the report of it was spread through the country; it was heard by all, and there is no reasonable doubt of the fact. Then, gentlemen, as to the particular outrage committed upon O'Neil, you find him in the presence of Mr. Soden, the magistrate, acting a reluctant part: affected by the terror, which prevailed through the country, and submitting at last to be examined; when the power of the magistrate was exercised in drawing up a summons requiring his attendance; and finding there was a power to force him to a disclosure of the facts, he gives information, and exhibits his back, tortured as he had been, with the appearance of raw and sore flesh; so that there seems to be no doubt that his house was visited in the manner he stated; for all the witnesses (except one), for the prisoners admit it, and that a cruel torture was actually inflicted upon him. Then, if you believe that he charges these men, now upon trial, falsely, you must believe that he, his wife, and his son, are joined in a conspiracy to take away the lives of the prisoners, innocent men, because he received that cruelty from others! No malice towards them appears to exist: no particular motive is shown why he should be desirous of throwing such an offence upon men guiltless of the crime. You will determine whether any man can be capable of such conduct, and whether O'Neil, his wife, and son, are joined in a conspiracy against innocent men, and to charge them with a fact committed by others. You find, that shortly after the fact, O'Neil gave information of it rather unwillingly. You find

him persevering in the same account a month after, charging men, with whom he was well acquainted for years: his wife was also acquainted with them, as was the boy, of whose judgment you can form an opinion, and whether he does not appear sufficiently sharp and ripe in understanding for his years. You will determine, whether this evidence is the effect of conspiracy, or the result of conviction upon this man, his wife, and son, or whether they are mistaken with respect to persons whom they have so long known.

Gentlemen, to oppose the evidence of the witnesses for the crown, you have the testimony of the witnesses for the prisoners; first, those who state where the prisoners passed their time, and who, if they gain credit from you, cover the time of the transaction; and it is for you to determine whether these witnesses deserve credit or not, and which class of witnesses you believe, those for the prosecution, or those for the prisoners. There is one portion of the witnesses for the prisoners, from whom very little favourable to them can be extracted. Those who state, that their houses were attacked upon the same night; their object was to show, that their houses were attacked by the same men, and that the prisoners were not among them. What does their evidence amount to? that one set of men attacked all their houses that night; but can such an account satisfy you, that it was impossible for the prisoners not to be there? You will determine, whether any of those witnesses had such an opportunity of seeing every one who was at their respective houses, as to be able to swear positively, he saw them all, and that not a man was there, whom he ever saw before; that deserves consideration in the state in which this unhappy country now is.

Gentlemen, a personal attack is made upon the character of O'Neil; you will judge with what force. His testimony is corroborated by his wife and his son: perhaps the corroboration of a wife is not much; but they agree in the facts. See then, in what circumstances his character is impeached: one witness states, that he actually saw him steal leather, and this happened nine years ago. You do not find that he fled the country; that he was solemnly accused, or avoided trial. The charge rests upon the single testimony of that witness; and with regard to the fact, you will see that O'Neil could have had no notice of its being brought forward this day, so as to defend himself; and consequently he is not able to bring witnesses upon the subject. The charge is therefore only capable of a flat denial, which is given to it by O'Neil. You will then consider, how far his credit is affected by the circumstance. His credit is again attacked, by stating, that he took an oath to pay money, and violated the oath. You may well distinguish between a man's making a promise of that nature, and coming in a solemn way to depose against the life of

another in a court of justice. But what is the fact, a balance of a crown remains due by him: he offers his word; the man hesitates, and then O'Neil swears he will pay him in eight days: he does not see him for a fortnight, and when pressed he pays the money. This shows, that much industry has been employed to scrutinize the character of the man; with what success you will determine.

Then with regard to the fact of his having gone by another name, he denied it, and said, he always went by the same name. Hodson states, that eight or nine years ago, he went by the name of M'Donough. This rests upon the testimony of Hodson alone. No other person appears to have known him by that name; he has lived in the country ever since, the parties seek to impeach his credit in every way they can, and Hodson is the single person who can state the fact. One would think, it would not be difficult to procure witnesses to prove that a man was known in his neighbourhood by a particular name; no other witness is produced, and it is stated, that this fictitious name was assumed on account of one Johnson, for whom O'Neil harboured a young woman, for the purpose of concealing a seduction, not committed by himself, but by Johnson. It seems odd enough, that he should for such a purpose assume another name, but that is the account given of it, by the only witness who has been examined to the fact, though from the scope of the defence it is manifest that considerable exertion has been used to attack the character of O'Neil, and it is observable, that though he was interrogated with respect to the change of name, the circumstances afterwards stated were not brought to his attention, Johnson's name was not mentioned to him, nor the affair of the young woman. If these had been mentioned, it is possible he might have given a satisfactory explanation, and have shown, that nothing immoral attached to him. You will observe also, that neither his wife, nor his neighbour who appeared as witnesses, were examined to that particular fact. And, therefore, you will judge, whether this last charge affects in any degree the credit of the prosecutor.

Upon the whole, gentlemen, if you believe the testimony of the witnesses for the prisoners, which goes to show where they passed the night, and which covers the time of the transaction stated by O'Neil, his wife, and son, then you must suppose, that they are mistaken, one and all—or, you must believe, that they are joined in a conspiracy to revenge what they have sustained from others against innocent people. If you believe that, you should acquit the prisoners. If, on the other hand, you believe, that the witnesses for the prisoners have sworn falsely, and if you believe the account given by O'Neil, his wife and son, respecting the outrage, it will be your duty to say that the prisoners are guilty of the capital charges stated in the indictments.

The Jury retired at ten o'clock, and after deliberating for an hour and a quarter, came out and asked the Court, whether they could convict one of the prisoners, and acquit the other.

Mr. *Baron George* informed them, that there was no law to prevent them from making such a distinction. They might convict one prisoner, and acquit the other. They might convict both prisoners or acquit both, as in their consciences they thought right.

The Jury again retired, and after deliberating further for half an hour, returned a verdict of NOT GUILTY as to both the prisoners.

The Court adjourned at near twelve o'clock at night, to ten the next morning.

Saturday, December 6, 1806.

THOMAS BRENNAN was indicted, for that he with others, on the 15th of November in the 47th year of the reign, &c. after sunset and before sun-rise, did forcibly, maliciously, and feloniously break into the dwelling house of George Brett, and did take and carry away three guns, value 3*l.* and one pistol, value 5*s.* the arms goods and chattels of George Brett. He was also indicted for a burglary and for causing arms to be delivered by threats and violence, &c.

The Prisoner pleaded, Not Guilty, and a jury being sworn, he was given in charge to them.

Mr. *Solicitor General*.—Gentlemen of the Jury;—It is my duty, in this case, to state to you the facts, by the proof of which the present indictment will be supported, and I shall do very little more than state them. There are general topics suggested by the unfortunate situation of your country which it is of great importance publicly to discuss and enforce; but the able and eloquent address which my right honourable and learned friend delivered yesterday in this court, renders it more than unnecessary, that I should tread in his steps, and perhaps efface his impressions: whatever duty devolves upon him is always discharged in such a manner, that nothing is to be added by those who follow him.—I will not affront him, or the public of this county, by doubting that what fell from his high authority, and his higher character, enforced by his admirable talents, and more admirable feelings, has had a due effect upon all classes of his auditors. I take it for granted, if any ignorance has prevailed, or if any unfounded misrepresentations have been circulated upon the subject of your duties, and the laws, that such ignorance is now exposed, and that the dupes of such misrepresentations are disabused. I will not suffer myself to doubt that such of the lower orders of this country, as had the good fortune to hear him, are now persuaded of their folly, and penitent for their

crimes. Still more am I convinced, if there existed among persons of a higher description, any individuals infatuated enough to abet, countenance, or connive at the outrages which disgrace your county, that those shortsighted and profligate men will now open their eyes to the frenzy and wickedness of such conduct. If the base influence of an unworthy panic has been capable of relaxing the vigour, or neutralizing the activity of any man in this critical moment, which calls for the vigour and activity of all, I am confident that such an abject principle stands now abashed and rebuked. But above all do I persuade myself, that every loyal and honest man now feels himself cheered and inspirited, assured of the efficacy of the laws and confident in the protection of the government.

The prosecutors in this case are young men of the name of Brett. They reside in the house of their father, not very far from this town; they are persons of decent and orderly character, and in consequence of their distinguished loyalty upon all occasions, they had been entrusted with arms for the protection of their persons and property.—To seize those arms, became an object to the banditti of miscreants, who now infest this country, and within this fortnight, upon the day laid in the indictment, the habitation of this peaceable and innocent family was assailed by a numerous assemblage of those ruffians, among whom the prisoners at the bar was particularly active.—They demanded the arms: the Bretts refused them—they fired into the house, and in vain attempted to force it—the old father was wounded, but the fire was returned by his sons—and so spirited was the defence, that the attack would have proved ineffectual, if the assailants had not threatened to burn the house and partly carried their threats into execution. Then, and not till then, did those gallant young men surrender, and give up those arms which their courage had showed them so worthy to carry. The triumphant party retired with their spoil, and the prisoner at the bar has been since apprehended in consequence of the prosecutors following up their spirited resistance, by giving information to a magistrate.

Such are the few facts of the present case. The offence imputed to the prisoner, is by the laws of the land most properly made capital; and if his guilt shall be proved to your satisfaction, he must atone for it with his life. You will hear it proved by evidence which, if my instructions do not deceive me, must satisfy your minds. If you shall believe that evidence, the highest duties and the most solemn obligations call upon you to convict the prisoner. If you do not believe it, you are bound to acquit him. If you entertain a doubt of his guilt, you are also bound to acquit him; but you will remember, gentlemen, that such a doubt as warrants an acquittal, must not be light or capricious; such as timidity or passion prompts, and weakness or corruption

readily adopts: it must be such a doubt, as upon a calm view of the whole evidence, a rational understanding will suggest to an honest heart;—the conscientious hesitation of minds, not influenced by party, preoccupied by prejudice, or subdued by fear.

Believe me, gentlemen, that upon the discharge of the duties of jurors, much of the fate of your country depends. In vain are those vigorous laws in force, which have been so maliciously represented and so credulously believed to have expired—in vain is your magistracy armed with those strong authorities and extensive powers, which in seasons of public disturbance are committed to their hands—in vain has the vigilance of his majesty's government brought justice home to your doors, by issuing a special commission at this unusual season—if men, impanelled like you, in the discharge of the most awful duty, can be found to trifle with your consciences, forget your oaths and betray your country. That, in seasons of public commotion, disaffection should prevail, and that panic should be excited, is only what we must expect; but I trust in God, that neither will ever be found invading and prophaning that sanctuary of the law—a jury box. I fear no such consequence in your respectable county. I am satisfied that you will do your duties. If you do not, take upon yourselves the consequences. If this atrocious, though contemptible insurrection, should get head in your county, in consequence of impunity and encouragement, and in its formidable progress involve the ruin of all that is dear and valuable to you, it would be a melancholy aggravation of your misfortunes that they ought to be attributed to yourselves.

George Brett sworn.—Examined by Mr. Sergeant Moore.

Where do you live?—I live in Ballyglass, near Tobbercorry.

At whose house?—At my father's house.

What is his name?—George Brett.

How many sons has he living with him?—There were three at the time.

At what time?—At the time of the attack.

Name them?—William, Christopher and myself.

When was the attack made upon the house?—On Saturday, the 15th of November last.

Were you at home?—I was.

Describe to the Court and jury the nature of the attack, and at what time of the night it was?—About the hour of eleven at night, there came a party about the house.

Was the door fastened?—Not at that time. Christopher heard a noise and stepped forward to the door, and saw a man lurking; he then stepped back to where I sat and said there was a man at the door: we were surprised; this being a second attack, we ran to the door and looked out, and saw a party; we then made forward to where we had the arms.

Where was that?—In the barn, joining the house.

What arms had you there?—We had two guns and a pistol.

Whose property were they?—The guns belonged to Christopher. The pistol belonged to my brother Patrick, who was not there at the time.

When you got to the barn, what did you do?—When we entered the barn, we closed the door, and made to the arms: Christopher took the pistol and presented it out of the window, he gave me one of the guns and I presented it also, and snapped it, but it did not go off.

Did you snap the gun at the time?—I did, while the party were breaking the windows of the dwelling house.

Did you hear the windows breaking?—I did.

Did you discover the cause why the gun did not go off?—I did not.

What did the party do?—They heard the noise of the snapping of the gun and perceived where we had the arms, and called out, "Here is the arms." My brother Christopher took another gun, opened the door and snapped at them and burned priming, by which they saw the clearer, where the arms were: they then rushed forward and made a punch of a gun at the window, and drove it in.

Did Christopher close the door after snapping the gun?—He did.

What did they do after that?—They pushed in a shutter of a window of the house, and then came forward towards us, calling out, "Take care of the window and the door,"—they fired a shot through one of the windows, and demanded the arms.

Did you give them?—I refused giving them and said, I had but one life, and one gun, and I would lose my life, before I would give up my arms.

What was the consequence of that answer?—They told me, they would set the house on fire, if I did not give out the arms.

Did they do any thing to show that intention?—They went to the haggard and got a sheaf and made a light and I thought the place was on fire.

How near is the barn to the house?—It joins the house.

Is it under the same roof?—It is.

Did any of the family sleep in the barn?—I and one of my brothers slept in it.

What did the party do afterwards?—They set fire to the straw and put it to the house, and I imagined the house was on fire, before I submitted to give up the arms.

Did you see the fire?—I saw them get on the wall, with the fire, to put it to the thatch, and then I said, I would give up the arms, rather than let the house be burned.

Did you give them any?—I did, I handed them out the gun, and the pistol.

Did you see any more of them?—They de-

manded the harder, that I should give up two stand more.

Had you two stand more?—No, but one gun.

Did you give that one?—I did not.

What did they do afterwards?—They said they would burn the house, if the remainder of the arms and ammunition were not given to them. My brother gave them some ammunition, and a powder horn: but they threatened severely, if they did not get the remainder. I told them, I would go out to them, and let them use me, as they liked. They told me I should not go out, as some of the party would injure me. I said, I would open the door and let them in; so I opened the door, and they came in and got a candle, and some of them disguised themselves.

How did they disguise themselves?—They put handkerchiefs upon their hats, and held them in their mouths.

In what part of the house was this?—In a small room in the barn, where we slept.

What did they do then?—When they got the candle, and began to search, one of the men dropped his covering: under the bed they got some ammunition, and another powder-horn and a gun, which we threw there for concealment.

Was the man, who dropped his covering, one of the party who was searching?—He was the chief head man.

How long were they searching?—They were ten minutes searching the place.

Were you there all the time?—I was: they planted a centry over me, and would not let me stir.

Look round, and try if you see any of that party here?—This man (pointing to the prisoner) was one of the men in the house.

Was he the guard over you?—No, he was not.

Was he doing any thing?—He was searching about and looking for arms.

Did you ever know Thomas Brennan before?—Yes, sir, I did; I saw him pretty often.

Where did you see him?—I saw him in his own house.

Was he the man who lost his covering?—He had no covering.

Where did he live?—At Camalacky.

How far is that from your father's house?—About three quarters of a mile.

Have you ever seen him in other places?—I have, in neighbours houses.

Did they go away?—When they got the gun, which we had concealed, they called out aloud, that they had got it: one of them said, "What?" and the man said, "By the law we have got a fine blunderbuss."

Your father was in the house all this time?—He was in the kitchen.

Did you see any thing happen to him?—No; but what he told me afterwards.

Did you see any mark upon him?—He had a mark and a lump upon his eye-brow, which

he said was grazed by a ball fired in through the window.

Is your father here?---No sir, he is old and weak, unable to come here.

Has he been from home this some time?---Not this half year.

Is he able to come here?---He is not able to ride half the way.

George Brett cross-examined by *Mr. Davy*.---
Prisoner's Agent.

How soon after this night did you lodge informations?---On Monday or Tuesday following.

What day of the week was the attack upon your house?---Upon Saturday.

Did you hear of any rewards offered for prosecuting these people?---Not at that time.

Were you in Sligo a short time before?---I do not recollect being in Sligo for six months before.

Were you in Tubercorry or Banada?---I was.

Did you see any papers posted up there?---I did not.

Did you hear of any rewards being offered?---I did not hear it, till such time as I was brought to lodge informations.

Was it not under the impression of reward, that you prosecuted?---It was not from lucre or reward that I did so.

Who brought you to lodge informations?---I got a summons from major Bridgham; I was afraid to go voluntarily.

What hour of the night was the party at the house? was it between eight and nine?---It was after that to my opinion.

Are you certain as to the time?---I had no watch; but to the best of my opinion it was eleven.

A Juror.---Is the prisoner the person who found the gun?---No sir, it was not: it was the captain, as I thought who commanded.

Mr. Davy.---Would you have gone voluntarily to lodge informations, if you had not been summoned by major Bridgham?---I would, if I was not afraid of being put to death.

Christopher Brett sworn.---Examined by *Mr. Webber*.

Where do you live?---In the parish of Rathcondran.

In your father's house?---Yes.

Were you there in November?---I was.

Did any thing happen there?---There did.

State what it was?---A number of persons calling themselves Threshers, came to my my father's house about eleven o'clock at night.

What did they do?---They broke in the windows, and fired in shots at the windows, and demanded arms.

Was any mischief done by the shots?---A ball slightly grazed my father.

What did you do?---When I heard two or three shots, I discharged a pistol out of the barn at them.

Did they get into the house?---They went into the kitchen, and I remained in the barn, till they brought a sheaf of oats, with which they threatened to fire the place, if the arms were not given out. Upon that, we gave out a gun and a pistol, and kept another gun, which we denied them, and they swore they would burn the house, if they did not get more. We told them we would let them in to search, which we did, and they found the gun, which we were keeping from them.

Did they ask for ammunition?---They did; and I gave them part, and threw more under the bed; and when they came in they found it, and took it with them.

Did you know any of the party?---No, I did not.

A Juror.---Were you in the house the whole time?---I was in the barn.

Mr. Webber.---Was there a light?---We had no light in the barn; but when they came in, they got a candle.

Were you acquainted with the prisoner any time before?---I had a slight acquaintance with the prisoner; but I cannot swear he is the identical man.

Was any of the party disguised?---Some of them had handkerchiefs upon their faces: he that searched the barn wore a handkerchief upon his hat.

Christopher Brett cross-examined by
Mr. Davy.

Had you as good an opportunity of seeing these persons as your brother?---I do not suppose I had.

For what reason had you not?---I was not so well acquainted with this man as my brother?

You swore you did not know any of the party?---I did not see the prisoner, so as to know he was there; perhaps my next door neighbour might be there, and I not know him.

What hour was it?---About eleven.

Might it not be between eight and nine?---It was later: to the best of my opinion, it was eleven.

Jurors.---Were your brother and you near to a tall man in the barn?---I was near to him.

How close to him?---Within two or three feet of him: we were guarded, while they were searching.

Was there a light?---There was a candle with the men searching for arms.

How near was that to you?---They were up and down the room: my back was to the light.

William Brett sworn.---Examined by *Mr. Solicitor General*.

Are you a son of *George Brett*?---Yes.

Were you in his house on the 15th of November last?---I was.

Do you recollect any thing particular happening?---There did: there came a knot of people about the house.

At what hour?---About eleven at night.
Were they disguised?---I saw one man who had a handkerchief down upon his face.

What did they do?---They broke in the windows, and demanded arms, and fired some shots, and I handed out a musket belonging to William Ross of Ballymoat.

You were in the house all this time?---I was.

What more did they do?---They ordered the door to be opened, threatening to fire the house; I opened the door; and they swore they would take my life, if they did not get more arms; I said, I had no arms in the house, but my brothers had the arms in the barn. They then swore they would take my life, for not letting them in at the first attempt. I got out into the street; and it being dark, they did not perceive me more than one of themselves for a time. I had not my hat on; and upon discovering me they gave me a few strokes with a stick and drove me in. I remained some time, and got out again, and hid in the garden.

Do you know any of the party?---Only to the best of my opinion.

Turn about and say, whether you see any of them here?---I think this man was. [Pointing to Terence O'Brien, who was in the same indictment, but not upon trial.]

Do you know any other?---No, I do not.

Did your father meet any injury that night?---They struck him with a gun, and a ball slightly grazed him in the temple.

[Not cross-examined.]

Court.---Were you in the barn at all?---No I was not.

Major James Bridgham sworn.---Examined by Mr. Sergeant Moore.

Do you know these people, of the name of Brett?---Not till they came to lodge informations.

Against the prisoner?---Yes.

How came they before you?---In consequence of having issued a summons.

Had you heard of the attack upon their house?---I had.

And you thought it your duty to summon them?---I did.

Did they attend?---They came the next morning.

And you took their informations?---I did.

[Case closed on behalf of the Crown.]

DEFENCE.

John Hart sworn.---Examined by Mr. Davy.

Do you recollect the 15th of November last?---I do.

Do you know Thomas Brennan?---I do.

Did you see him that day?---I did.

Where?---On the main road between Sligo and Foxford.

At what hour?---Between eight and nine.

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Was it near his own house?---It was near a musket shot.

Did you continue with him any time?---I did, till he got to his own house.

Did you remain there?---No, I was tired, and thought it too long to remain.

Was there any person along with you?---Yes, Martin Sweeny, and a girl.

Is she here?---No.

What is her name?---Catharine Brennan.

Did you hear of the Threshers being out that night?---I did; I heard the alarm of the people and guns.

In what direction?---At that place.

What place?---Brett's house.

Was that before you saw Brennan?---It was.

What passed when you heard them?---The girl first took notice of it, and warned us, that the Threshers were out.

Did you hear any shots?---We did hear shots fired.

Was it after that you met Thomas Brennan?---It was; and after parting with him at his own house, I heard more.

What distance from Brett's house were you?---A mile and a half, across a bog and dangerous places; it would be better to go three mile of the road, than cross it.

When you came to the prisoner's house, did he go in?---He went in before my face.

And you heard the shots at Brett's house at that time?---We did indeed.

John Hart cross-examined by the Attorney General.

How far do you live from Brennan's house?---In the next village.

How far is that?---The two quarters of ground adjoin.

Are you 100 yards from him?---It is 100 perch distant, and more by taking a round with a beast.

Which of you lives nearest to Brett?---I am.

Were you on that day in the market of Sligo?---I was.

Who was along with you?---Martin Sweeny. And he returned with you?---He did.

Where does he live?---In the next village again.

How near to Brett's?---Nearer than me.

How far from Sligo do you live?---About fourteen miles.

Was it the market day of Sligo?---It was.

What were you doing there?---Selling a hide.

How did you carry it?---Upon a beast; a mare that was slow of foot, and not able to go fast.

Did you ride all the way?---No, I footed some of it.

Why?---To let the girl ride.

At what time did you leave the market?---I can't tell.

To whom did you sell the hide?---I do not know.

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You never saw him before?—No.

Nor heard his name?—No, indeed.

At what time did you reach Sligo?—At ten.

Did you meet a chap immediately for your hide?—I did not for some time.

About what time did you sell it?—About two o'clock.

Then you eat your dinner?—I did, and was walking about for a time.

But you dined in Sligo?—I did.

Where?—At the widow Brennan's.

Did any one dine with you?—It is all the dining was a piece of bread out of my pocket, and some drink.

You remained some time after?—Yes.

What time did you set out?—I can't say; it was dark before I got to Ballasadere.

Did Martin Sweeny go with you the whole way?—He did; I wished to have company; the journey was long.

You were afraid to meet the Threshers?—I did not care to meet them.

They are a lawless set of people?—No, they are not; I have nothing to say as to that.

How far did you go before you heard talk of the Threshers?—Within thirty perch of Brennan's place.

You were alarmed at hearing of it?—We did not like to hear of it.

What was the first alarm you heard?—I told you before.

Tell it again?—We heard the noise of dogs, talk of people, and report of guns.

Was this the noise of the Threshers?—According as we judged, it was.

Which did you hear first, the voices of the people, or the noise of the guns?—The voices.

How far did you go afterwards, before you heard the noise of the guns?—Not seven yards.

Did you stop to listen?—No.

You continued to walk quietly on?—We did.

And Brennan went into his house?—Yes.

And you went on to your own house?—Yes.

And you heard the noise still as you went on?—Yes.

And Martin Sweeny went forward to his own house?—No, he slept in the village that night; there was a bad step for him to go.

How far is his house from yours?—About 150 perches.

So he stopped for the night without going home, though within 150 perches of his house?—He did; the night was bad; there was rain.

When did it begin to rain?—Just before we got home.

Was it before you heard the noise?—No; we got into the house before the rain began.

How long?—Not long; about five minutes.

Then Brennan and you got into your houses before the rain?—Yes.

Did Martin foresee that the rain was com-

ing?—He did not like to go home in the dark; he is a delicate man, and the place was boggy.

How long might be the time, between your first hearing the barking of the dogs and getting to your own house?—Not more than from twenty to thirty minutes.

How near were you to Brennan's house, when you first heard the noise?—Within a musquet shot.

And you kept your horse walking all the time?—Yes.

How long were you travelling from Brennan's house to your own?—I can't tell.

Were you half an hour?—No. It was more than ten minutes.

Was it before or after you parted Brennan, that you heard the noise?—It was after.

How many shots did you hear after you parted Brennan?—One or two shots.

Were there any fired after you got home?—I do not know; for I did not desire to go out after I got home, being tired.

Did you make any inquiry what was going on?—No.

Who were in your family?—A wife and six children.

Did they hear the noise?—They did not; they were not out.

Did Martin Sweeny say whether he would go home or not?—He was in doubt whether he would or not, because of the bad step.

What did he do with his horse?—He left it at his sister's at grass.

How soon after did you hear the particulars of Brett's house being attacked?—When I went to prayers the day following.

Did you see Martin Sweeny there?—No: he was a little stiff and did not go.

When did you see him afterwards?—Not for some days.

When did you learn that he did not go home?—From his sister's children.

How far does she live from you?—Twenty or thirty yards.

Was it the next day they told you that he did not go home?—No: the day after.

You asked them, whether he went home or not?—No; they told me.

Why did they tell you?—Because they were talking together.

What did they say about it?—They told me on the Monday that he did not go home, being in dread of the badness of the step.

You said it was the badness of the night that prevented him?—It was both he was in dread of.

Had a drop of rain fallen before you parted?—There were drops in the wind, and it seemed that it would rain.

Did the sign of the rain make the step bad?—No.

Could he not have been home in five minutes?—No: with a beast he could not, unless he went round half a mile.

Could he not walk there?—No: he is a stiff man.

Did he not walk about the town of Sligo at the market?—He did.

Has he not a family?—He has.

How many?—A wife, and four or five children.

And he had got back within 150 perches of his house, and would not go home from dread, as you say, of the road and the weather?—He would not.

When his sister's children told you of his sleeping there, had you heard of the prisoner being charged with this offence?—No.

When did you hear it?—When he was taken up.

When was that?—In the same week.

When did you mention what you could prove on the trial?—I never mentioned it, till I came here.

Did you ever tell any person that you were with Brennan that night?—No, not till I was summoned.

When was that?—Tuesday last.

You knew that Brennan was charged with this offence, and that he must be innocent, according to your account, and yet you never mentioned the matter till Tuesday last?—I did not tell it.

Why did you not immediately tell that you could prove his innocence?—Because I did not understand it.

When did you meet your neighbour Martin after that night?—I never saw him afterwards till last Tuesday.

Did it never occur to you when Brennan was charged with this offence, to go to Martin and talk of it?—I never thought of it.—[N.B. It appeared that Brennan was committed on the 20th of November.]

Did you see any of Brennan's family after the charge was made?—I did; I saw his wife.

Did you say any thing to her about it?—She knew it all herself.

When did she come to you about it?—I cannot say the certain day.

Was it shortly before Tuesday last?—I can't say, if you were to cut my head off.

Was it a week ago?—I can't say.

Did she come to you before you were summoned?—She did.

When was it?—As near as I recollect it cannot be less than eight or nine days.

Did she ask you any thing of it?—She asked what I could say and I told her.

Did you not say just now that you mentioned nothing of it to any person until Tuesday last?—I did not.

You did say so and assigned as a reason that you did not think about it? How soon after Brennan was charged did his wife come to you?—I was never asked about it till eight or nine days ago.

Then it must be three or four days after he was committed that his wife came to you?—Yes.

So she let three or four days pass without asking you?—She did not know it till himself told her.

Did you tell his wife what Martin could say?—I did not tell her any thing but what I could say myself; she knew it herself.

Did you speak to her about Martin?—I did not.

Had you any conversation with the prisoner or any of his friends as to the evidence you were to give?—I had not.

Had you any conversation with any of the witnesses who are to be produced?—No.

Do you know what witnesses he means to produce?—I do not only myself.

Have you heard what witnesses he means to produce?—Only Martin Sweeny and Rose Brennan, who was watching a child.

Was she summoned?—She was.

How do you know?—The wife told me.

How often did you see the prisoner's wife on this business?—Twice.

Did you see Rose Brennan and Martin Sweeny this day?—I did.

Did you talk with them about your evidence?—We were asking one another what we could do in the town, and that is all.

Were there any persons present at this?—There were.

Who were they?—I can't say.

Can you name any of them?—Only his brother who lives in this town.

Did not the prisoner's attorney ask you what evidence you could give?—He did.

Did he not also ask Martin what he could say?—He did, Martin mentioned more than I could say.

Then Martin is apprized of all the evidence you can give?—I suppose so.

When did the prisoner's attorney ask you these questions?—This morning after the judges came into court.

Was Rose Brennan present?—She was.

Did you ever hear the name of any person who was at the attack on Brett's house?—I did not till this man was taken up.

Martin Sweeny sworn.—Examined by Mr. Davy.

[This witness gave his testimony in Irish, and an interpreter was sworn and desired to ask the witness upon his oath did he ever speak English to any person?—He answered only when he was drunk, and then he spoke a little gibberish of English.]

Do you recollect the night of the attack upon Brett's house?—I do, and was in this town that day.

Did you see Thomas Brennan that day?—I saw him on the road, this side of his own house as I was going home.

What hour of the night was it?—I can't recollect the hour or the time, but it was before any person went to bed, as I believe, it might be about nine o'clock.

Who was along with him?—John Hart.

Was there any other person there?—There was a girl from the neighbourhood, Catharine Brennan.

When did you and Hart meet?—We met in this town and were going home from the market.

Did you hear any noise before you met the prisoner at the bar?—The woman that was along with us first heard the noise and told us the Shakers were out.

Did you hear any shots fired that night?—

We heard the noise of dogs and men and to the best of my belief we heard the noise of guns before and after.

How soon after you heard the noise of the dogs did you meet the prisoner?—At my own garden next the high road.

But how soon was it?—It was not half an hour.

How far did you walk together and where did you part?—We were together till he went into his own house.

Did you hear any noise after you parted with the prisoner?—I heard noise and shots.

What hour was this?—It might be between nine and ten.

In what direction were the shots fired?—The side where George Brett's house is.

Did you hear any thing of the attack the next morning?—On the following morning I heard there was damage done to Brett the night before.

Martin Sweeny cross-examined by *Mr. Attorney General*.

Who told you on the following morning of the damage done to Brett?—The people of the town and the neighbourhood.

Was it before you were out of bed?—It was not, but after I got out of my bed.

What time did you get home that night?—I was at home before the family went to bed.

What hour was that?—I am not skilled in watches.

How far is your house from the place where you left the prisoner?—About half a mile.

Were you much wet with the rain in going home?—There was a river before me, and it was worse to me than the rain.

Where did you put your horse that night?—I put him eating the hay where I always put him.

Did you get any supper after you went home?—I did, I always get it.

Was it your wife got your supper for you?—I am not certain whether it was my daughter or my wife.

Do you know John Hart well?—I do.

Did you see him the next day at the chapel?—I did not.

Were you there the next day?—I was not there; I heard the priest would not be let in, and I did not go there.

What is become of the girl who travelled with you?—I do not know where she is, but I believe she is with her father.

How far is his place from this town?—Fifteen or sixteen miles.

Did you go into Hart's house that evening?—I did not.

Why not?—I was not well, and was in great haste home.

Did you stop any where until you got home?—I stopped at my sister's to smoke a pipe, and I had a great number of things for the village, and some tobacco and salt for my sister.

Who held your horse while you were at your sister's?—The horse was at the door.

But did any body hold him?—She threw him some hay and there was no occasion to hold him.

Why did Hart go with you to your sister's?—He did not go up for the way to Hart's house is different.

Are you positive that Hart did not go up at all to your sister's?—He was along with me to the turn of the road, but did not go with me to my sister's.

How soon did you see Hart after that night?—Not till the Sunday eight days after.

Where did you see him then?—At mass.

Had you heard at that time that Brennan was charged with this business?—I did not hear it till he was taken.

Was he taken before you met Hart at mass?—He was.

What conversation had you and Hart about the business?—We had not the smallest conversation about it that night.

Do you mean to say that you knew that Brennan was charged with Brett's business, that you knew Brennan was not there, and yet said nothing to Hart about it?—I did not.

Did you tell Hart you were in a hurry home that night?—I did not.

Did you tell him whether you would go home or what you were going to do?—I did not, but was going home as quick as I could.

When did you see Hart last?—I saw him here a while ago as I was coming on the table.

Did you see him before that?—I did.

Did you hear him say what he was to prove?—I did.

Where?—At the upper end of the town we were talking about the business.

Was any person present?—I do not know there were people within, but do not know whether they heard it or not.

How came you to talk about it?—Because we got a summons.

Did Hart tell you what he was to say?—He did, but I knew it myself as well as he.

Did you tell Hart what you could say?—I made no remark about the business, but I told Hart what I had to say.

Did this conversation pass in the presence of any other person who is to be a witness?—I do not recollect.

Are you sure?—I think not.

Had you any conversation with Brennan the prisoner, that night before he got home?

—Nothing more than his asking me about the market.

Did you ask him about the shots?—We did not, for it was after parting Brennan we heard the shots.

How long after?—A short way.

Were you near enough to hear the voices of people?—I heard a noise of people and of dogs.

How soon after the parting from Brennan, did you hear that noise?—It was a short time.

Are you sure that Brennan was in the house when you heard that noise?—I am not sure whether he was or not, but we left him at the house.

Are you sure you left him at the house before you heard the noise?—We heard the noise before we came to his house, and after we left it.

Then why did you say you had no conversation with him about the shots and the noise, because you had left him before you heard any?—[No answer.]

Had you any conversation with Brennan about the noise?—I had not.

Did Brennan say any thing about it?—We were tired and had no conversation about it, only asking about the markets.

Did any of them say any thing when the girl told them the Threshers were out?—They did.

Who made any remark?—We stood and listened, and cried we heard that the Threshers were out.

Was that before you met Brennan?—It was.

How long before?—A small piece of the road.

Did you tell Brennan when you met him?—No.

Why not?—Because he must have heard it himself if he was not deaf.

Did Brennan tell you any thing about it?—He did not.

What were the articles you left at your sister's?—Salt, soap, and tobacco.

John Hart called again, cross-examined by
Mr. Attorney General.

Had you any conversation with any person since you were upon the table?—I had not.

Where does the girl live who travelled with you the night of Brett's attack?—In the same town with myself.

Where is she now?—At home.

Why is she not here?—Because she could say nothing but what we could say.

What articles did you bring from Sligo?—Salt and tobacco and little things of that sort.

How much salt and tobacco did Sweeny bring?—I do not know.

Had you much conversation with him on the way?—Only what neighbours say.

Was he drunk?—No, he had no reason.

Tell me any thing he said?—I cannot recollect.

Was it Irish you spoke?—It was.

Did he ever speak English?—Only when he is out of his senses he speaks a word or two.

On what part of the road did you meet Brennan?—One hundred and fifty yards from his own place.

Did you meet him or did you overtake him?—We met him.

Then why did he turn back?—Because he asked us about the market.

Which of you first heard of the Threshers?—The girl and the man who was with us.

Do you mean Sweeny?—Yes.

Which first spoke of it?—The girl did.

Did any one remark upon it?—I gave ear to it.

Did the prisoner say any thing?—We did not meet him at that time.

Do you mean to say, you heard a noise before you met the prisoner?—Yes.

How old is the daughter of Sweeny's sister who told you he was not able to go home Saturday night?—One of them is twenty five, but they both told me.

How much land does the sister hold?—Very near eight pounds worth.

Had she a place for grazing Sweeny's horse?—She had.

What reasons did her daughters assign for their uncle not going home?—I asked them no reason, but he said himself he was in dread of the weather and the bad step.

Mention what he said?—He said he was in dread of the weather and a bad step, and thought he would stay at his sister's.

Was it that put you in mind of inquiring about him on the Monday?—It was.

Did Sweeny say any thing when you were telling your evidence to Mr. Davy?—I do not recollect he said a hap'worth.

Where was it?—In Kelly's shop.

Where were you standing?—On the floor.

Where was Sweeny?—Behind Mr. Davy.

Were you all close together?—We were.

Did Sweeny seem to think that the account you gave was true?—I suppose so.

Why so?—Because he said he had nothing else to say but what I said, and had no English to express himself.

Upon your oath had he heard what your evidence was when he said that?—He had.

Did you ever see Sweeny from that night till you saw him here this day?—I never saw him from that night till I was summoned here.

Did you not meet him at mass?—If I did I do not recollect.

Call it to mind?—I did not see him.

Did you not see him the next day?—No.

Did you ever meet him from the time this business was laid to Brennan's charge till you met him here?—I did not.

Court.—Did you go to mass the Sunday after Brett's house was attacked?—I did.

Did you see Sweeny there that day?—I did not.

Do you both go to the same chapel?—We do.

Was it after Brett's house was attacked the chapel was shut up?—It was.

Then why did you go there?—Because I was obliged to go there as well as others.

What obliged you?—We were obliged to pretend to go to mass.

Was Sweeny standing by with the attorney when you told him your evidence?—He was.

A Juror.—How far from Brett's house did you meet Brennan the prisoner?—A mile and a half.

Could he have run from Brett's place, and met you on the road?—He could not.

Court.—When you met Brennan he was on the road going from his own house?—He was.

At what hour was it?—About nine.

Rose Brennan sworn.—Examined by Mr. *Davy*. [This witness also gave her evidence in Irish, and a person was sworn to interpret it.]

Do you recollect the night of the attack upon Brett's house?—I do.

Where were you that night?—In Thomas Brennan's house from night till morning.

Where was Thomas Brennan that night?—He was within, in the house; he went out for a quarter of an hour and returned again.

At what hour was that?—I do not know; I have no knowledge of hours at all.

Did you hear any shots at the time of the attack?—I did not hear a ha'porth about it, nor did I leave the house at all. There was a sick child, and I was taking care of it from night till morning.

Can you form any opinion what hour it was when he went out?—I can form no opinion of it, but he went out for a quarter of an hour and returned, and did not go out again.

Was it after night fall?—It was about bedtime.

Did you see any other person that night?—I did not see any body but heard people speaking to him on the road.

Did you know them?—I did.

Who were they?—John Hart and Martin Sweeny; I knew their voices, and I within the house.

Did the prisoner leave his house after that conversation with those people?—He did not till morning.

When did he go to bed?—Immediately after supper, he went to bed at the other side of me.

Did he get up during the night?—He did not, for I was sitting up from night till morning.

Could he leave the house unknown to you?—He could not.

Rose Brennan cross-examined by Mr. *Solicitor General*.

What day of the month was this?—I do not know, but it was Saturday night.

How do you know it was the night Brett's house was attacked?—Because there was a report the next day that his house was attacked.

Did you hear any shots?—I did not hear a shot at all.

When your master came in, did he say any thing to his wife or any other person about shots being fired?—I did not hear a ha'porth about it.

What took him out into the road that evening?—He was going to a pound, and returned back.

Did he say what prevented him going to that pound?—We did not ask him.

But did he say any thing without being asked?—I did not hear him say any thing about it.

How far is the pound from the house?—About a mile.

Was it on the way to Sligo, or any other road?—On the way to Sligo.

How long had the child been sick?—A week.

Were you nurse tending it the whole week?—I was not there a night at all but that night.

Did you close your eyes that night?—I did not, nor was I sleepy.

Do you know what Brennan wanted that night at the pound?—Looking for sheep, as he told me.

Were they Brennan's sheep that were missing?—I do not know whose they were.

Did he say any thing about the sheep till night?—I did not hear him say any thing about them.

What did he say when he was going out?—I do not know.

Then how do you know it was to look for sheep he was going?—He heard his sheep were in pound, and he went to look after them.

When did you hear that?—I do not know.

Who told it to you?—I do not know a ha'porth about it.

And your master said nothing about it?—No.

When he was going out, or when he was returning, did he say any thing about these people?—I did not hear him say a word.

Did you ever afterwards hear he recovered the sheep?—I did not nor did I inquire.

What put the sheep into your head, if you did not hear of them?—When he was going out, he said he was going for sheep to the pound.

Do you recollect you told me he said nothing about it?—I do not recollect a ha'porth of it.

Would you have known any thing about the sheep, if he had not talked of them as he went out?—I would not know a ha'porth of it, if he had not told it as he went out.

Do you know Martin Sweeny?—I do.

Have you often heard him speak?—I do not know whether I ever did or not.

Did you often speak to him?—I do not know a ha'porth about him.

Did you not ever hear him speak?—I did.
When?—I heard him often, and heard him that night on the road, and knew his voice.

Where did you hear him before that?—I have no recollection.

Did you ever hear him speak in Brennan's house?—I never did.

Did you ever see him there?—I never did.

Did you ever see him since that night?—I saw him the other day coming to town here.

Where did you see him?—I do not know; I have no recollection.

How long ago is it?—I saw him here this day.

But you said you saw him the other day. Where did you see him then?—I do not know.

Did you see him this morning before you came to Court?—I saw him here in the Court.

Did you see him before that?—I saw him walking in the street.

Did you speak to him?—Not a great deal.

What did you say to him?—I did not say any thing to him, but salute him.

Do you know John Hart?—I do.

Had you any conversation with him this day?—I had not.

Did you hear Hart tell any body what evidence he could give?—I did not; nor do I know what witness he could give.

Did you ever tell what evidence you could give?—I did.

To whom?—I was obliged to tell it when my name was put upon the paper.

When was that?—Yesterday.

Was Hart present?—He was not.

Did you ever tell it before yesterday?—I do not know.

When was Brennan first accused of this business?—I do not know.

How long ago is it since Brett's house was attacked?—I do not know when it was.

Was it a month?—I can't tell.

Might it have been three months ago?—I can't tell.

Is it a year?—No, nor half a quarter of a year.

Do you know where Brennan was any night after, or any night before the one you mentioned?—I do not know any thing of him, but that particular night.

What family has Brennan?—His father and mother, wife, children and maid.

How many children?—Four.

What age is the eldest?—I don't know.

What size is the eldest?—Not very big.

Where is Brennan's father?—I do not know.

Where is his mother?—I do not know.

Where are the children?—They are at home, but the mother is through the place here.

Were they all at home that night?—They were.

Are you related to the prisoner?—No.

How long did you live with him?—I did not live with him.

How long did you live in the house?—I did not live in it.

Were you ever in it before that night?—I was.

How long before?—I can't tell.

What brought you there that night?—His wife sent for me to take care of the children that night, because a child was dying.

Are you sure that was the night you were sent for?—I am quite sure of it.

Where do you live?—A little below Brennan's.

How far from him?—I do not know.

Who went for you?—A little girl.

Is she here?—No.

At what time of the evening were you sent for?—Before night.

Who lives in the house where you live?—My father.

What is he?—A landholder.

Did he know you were sent for that night?—He did, every body in the house knew it.

Where is your father?—He is at home.

Have your mother or sisters been summoned here?—They have not.

[Defence closed.]

SUMMING UP.

Mr. Baron George.—Gentlemen of the Jury:—Thomas Brennan stands accused before you, on four several indictments. It is not necessary to draw your attention from the only material question that occurs in this trial, by pointing out to you the particular distinction between these several indictments, because they are all capital charges under the act made for preventing tumultuous risings, and under the law against burglary.—The cause of preferring so many indictments, for one transaction, was, I presume, to obviate all difficulties, that otherwise might arise out of the evidence on the trial. And as without a question, the persons, who so attacked, in a riotous and tumultuous manner, the house of George Brett, and robbed it of the arms, are guilty of the matter contained in these indictments; you may now apply all your attention to find, whether upon the evidence before you, the prisoner, Thomas Brennan, was or was not one of those persons.

That the prisoner was one of those persons is proved by the testimony of George Brett, the younger, only. The testimony of Christopher Brett, and William Brett, does not go to that fact. George Brett has sworn, that when he opened the door of the barn, the persons who had attacked it came in, called for a candle and got one, and with that light searched for more arms; that they remained in the barn ten minutes. He swears the prisoner was one of them there—that he was searching about the house looking for arms—that he knew him before—that he had no covering at all to disguise or conceal him—that the prisoner lives at Carnalacky about three quarters of a mile from his father's house, and that this witness has been in the house of the prisoner.

Gentlemen, you observe, that although George Brett is positive as to the prisoner, yet Christopher Brett, his brother, who was in the barn at the same time with him, swears he did not know any of them—but this witness said, he did not before that time know the prisoner as well as his brother did, and had but a slight acquaintance with the prisoner before. The evidence which goes to charge the prisoner remaining thus (for William Brett, the third witness in the prosecution, not having been in the barn at that time has said nothing against him) demands your most serious consideration—for you are on your oaths to answer, whether George Brett has charged the prisoner truly or falsely—through mistake or wilful malice. In the course of the trial, it has not appeared that any enmity ever subsisted between George Brett and the prisoner, or their families—You have not only heard what George Brett has said against the prisoner, but you have seen the manner in which he related it. You will judge how far George Brett appeared disposed to magnify, or inflame any thing to the prisoner's prejudice; for where such a disposition appears, evidence cannot be heard with too great caution. You find this prosecution did not originate with the family of Brett—they were afraid to complain to the magistrate; they attended before him by compulsion, and in obedience to his summons, and if they had not submitted to be examined and to be bound over to prosecute here, they would have been committed to the county gaol. The examination appears to have taken place before the magistrate upon the Monday after the fact, when leisure had intervened to consider who the persons were, who attacked the house; and before such a length of time had elapsed as could prejudice the memory of the transaction. But, gentlemen, if you shall consider this evidence, whilst it remained unanswered and uncontradicted, satisfactory, you will next consider the evidence offered in the defence and its effect.

The defence of the prisoner is what is called an alibi. That at the time he is charged to have been committing the crimes mentioned in the indictments, at Brett's house—he was not and could not be there, for he was then in or near his own house, at the distance of three quarters of a mile from the house of Brett. This sort of defence having often been abused is heard with suspicion; yet when true, it is the very best and often the only defence, that an innocent man can make. The truth of this sort of defence is not always to be ascertained by the direct testimony of the witnesses called to prove it. Several witnesses are seldom produced in such cases without its being known, that they agree with each other in the substantial and principal fact they are to relate; and as in general, it is not to be expected, that a prosecutor should come with evidence prepared to meet this sort of defence, the usual test of

its truth or of its falsehood, where the witnesses are unknown to the jury, is a cross-examination of the witnesses, kept asunder, and fairly conducted under the eye and observation of the jury.—And here, you should remember, that differences, or contradictions in circumstances, otherwise trivial, become important in showing the truth or falsehood of such narrative. The defence of the prisoner here stands on the testimony of three witnesses; two of these witnesses, that is to say, John Hart, and Martin Sweeny go to the same matter: in their direct testimony they both say, that on this evening, on their way home from Sligo, they met the prisoner Brennan, near his own garden, at the distance of about the sixth of a mile from his own house; that this was after the attack on Brett's house had commenced; they accompanied him to his own house, whilst that attack was going on, and after they left him there, they heard shots in the direction of Brett's house, at the distance of near a mile. Gentlemen, for the testimony of these witnesses on the cross-examination, I wish to refer you to the notes which I perceive you have taken very fully, and to the observations which you yourselves may thereupon suggest to each other.

Gentlemen, the testimony of John Hart and Martin Sweeny has been followed by that of Rose Brennan; that girl has told you the business which led the prisoner out of his house on that night, when Hart and Sweeny swore they met him; and she swears, that she knew the voices of Hart and Sweeny, and heard them speaking with the prisoner on the road, near his door, when he returned to his house, as they had related. She swore, that after his return at that time he remained at home all the rest of the night, that he then eat his supper and went to bed; and she states, the occasion on which she was present to know all this—she says, she was in the prisoner's house on no other night but this, that the prisoner's wife sent a little girl for her to come and to take care of a sick child, that was dying in his house on that night, and that she took care of that child from night till morning; during which time she never closed her eyes—and this service she states was done by her on this night only in Brennan's house, where his father, mother, wife and children, and he then were.

Gentlemen, I have observed you paid the attention that was due to the testimony of this girl, and doubtless also to the manner in which it was given; and if you believe it to be true, you cannot hesitate to acquit the prisoner; as according to that, he neither could have been at Brett's house at the time, nor have had any part in the disturbances that prevailed that night. But, gentlemen, if you find you cannot believe this testimony of the girl, but discredit it, as being fabricated, you will consider how far that will go to affect the evidence of Hart and Sweeny,

whose testimony this girl was examined to corroborate, and whose testimony, this girl, if she is to be believed, has so very materially corroborated. Gentlemen, it appears, that this attack was made on the house of Brett, the elder, not to commit a burglary of the common sort; but to rob it of arms and ammunition: but, gentlemen, the criminality of the persons concerned in it is not the less nor the offence the less alarming, but is of greater magnitude on that account; it deserves to be considered for what purpose it is, that riotous and nightly mobs thus go about to seize into their hands the arms of the regular and orderly inhabitants of the country.

Gentlemen, it is not imputed to the prisoner, that he was the captain or leader of these disturbers of the peace; nor that he was the man who fired into Brett's house; nor that he was the man, who with the sheaf of oats, threatened to burn the house, if the arms were not delivered out;—what he is charged to have done is, the searching about the house, looking for arms—and it is right, that you should know, and that this crowded audience should hear, that when a body or party of men go out to commit a felony, every man of them is as criminal as the leader or captain.—The captain could do little mischief, if he were alone, and without the presence and support of his deluded followers: and all persons here should likewise know the danger of going forth with a riotous and tumultuous body of men, to disturb the peace: for although a man should go out resolved to do nothing more than to add himself to their number; yet that will not save or defend him in a court of justice; for here he will have to answer for every act, which the worst man of that party may in his wantonness and wickedness commit, in furtherance of the object of the rising; and thus it may happen, that a man, who never before offended against the laws of his country, may after he has joined such a body, and before he has remained a quarter of an hour in their company, or gone a field's length, be fatally involved, and guilty in law of murder, burglary, robbery, and the greatest crimes. It is right, that you should know that such is the law, and it is important, that all now present should know it also.

Gentlemen, upon the evidence here given, you are now to consider, and decide, whether the prisoner be guilty or not; and if upon the evidence, a fair or reasonable doubt arises, you should give way to that doubt, and acquit, but if you find your minds satisfied, and convinced by evidence, in that case you will find the truth.

The Jury retired, and after deliberating near an hour, returned a verdict, **GUILTY**.

The Court then adjourned to Monday, upon which day and Tuesday, the following persons were tried before the lord chief justice.

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tice: but the hon. Mr. baron George being obliged to go forward to Castlebar to open the commission for the county of Mayo, and the reporter having gone there also, he is unable to give any detail of the trials of those persons.

Monday, December, 8th, 1806.

Thomas Kilmartin and John Killerlane were indicted, for that they with many others, on the 21st of September, 1806, at Lignadiva in the county of Sligo, did unlawfully, wilfully, and tumultuously rise, and assemble and appear by night to the terror of his majesty's subjects—and did assume the name and denomination of Threshers and wear unusual badges, namely white shirts over their cloaths, and white bands over their hats, &c. &c. against peace and statute.

The prisoners were found guilty, and sentenced to be twice publicly whipped, and imprisoned for six months.

Patrick Hart, Bartholomew Bighlane, Archibald Biglane, James Kinzy, and John Kinzy, were indicted, for that they on the 21st of November, 1806, at Oghill, in the county of Sligo, did feloniously in a forcible manner, demand fire arms from Robert Armstrong, with intent feloniously to rob him thereof, against peace and statute.

The prisoners were all convicted and sentenced to be transported for seven years.

James Costello, indicted, for that he with others, November 18th, forty-seventh year of the king, at Tounatruane, did forcibly and feloniously seize one gun and one sword, the arms and goods of Dominick O'Donnell, against the peace and statute, and did forcibly and feloniously seize and carry away certain ammunition to wit: ten balls, and half a pound weight of gunpowder, the goods of said O'Donnell.

The prisoners was acquitted, and O'Donnell was committed for perjury.

Patrick Fagan was indicted for that he September 27th, forty-sixth of the king at Ardrahin in county Sligo, after sun-set, did wilfully, maliciously, forcibly and feloniously, break into the dwelling-house of John Griffith, against peace and statute.

The prisoner was found Guilty, and sentenced to be hanged.

SPECIAL COMMISSION.

Castlebar, December 8th.

The honourable baron George opened the commission for the county of Mayo, and on the next day, the following gentlemen were sworn upon the grand jury.

Rt. Hon. D. Browne, Chas. O'Malley, esq.
Hon. Hen. A. Dillon, Thomas Palmer, esq.

G

Sir S. O'Malley, bart. George Moore, esq.
 Sir T. E. Brown, bart. Matt. Wyatt, esq.
 Dom. G. Browne, esq. Owen O'Malley, esq.
 Peter Lynch, esq. A. C. O'Malley, esq.
 Thomas Lindsay, esq. Pat. Lynch, esq.
 Charles Costello, esq. James Madden, esq.
 Thomas Ormsby, esq. Conn. O'Donnell, esq.
 Robert Rutlege, esq. Wm. Palmer, esq.
 Anthony Gildea, esq. And. Browne, esq.
 John Ormsby, esq.

Mr. Baron *George*. Gentlemen of the grand jury. At a time when by the bounty of Providence and the bravery of our fleets and armies, all his majesty's dominions (a few counties in this part of Ireland excepted) are in a state of profound peace, and are likely long to remain so, we are called together to quiet the alarms, that are disturbing your county.

Gentlemen, for the punishment of offences which have aggrieved individuals, or are confined to a narrow circle, justice is administered in your county, twice in the year, and at convenient seasons. But an evil has gone forth among you, which is of unusual concern, and which calls aloud for an immediate remedy. Tumultuous and unlawful assemblies have been formed, names (made frightful by crime) adopted, and disguises assumed, to spread terror—houses attacked in the night time—arms and ammunition taken—unlawful oaths administered—and tortures, before unheard of, inflicted!

If the end to which these disorders are leading a deluded populace, were avowed, little mischief would be done. Foolish and credulous as the peasantry are, few would be found to go forth on such a forlorn hope. But this is not done—certain abuses and extortions, that are said to have arisen in the payment of the duties of the clergy, have furnished a popular pretext, and are the only avowed grievances this violence is intended to remove.

Gentlemen, we all know, that every human institution, however necessary, however salutary, is liable to be abused; and there is no abuse that has not an appropriate remedy. Men, therefore, who really desire a remedy, may seek it, and may have it, without any danger to their lives, and without transgressing the laws. The oaths administered, though so artfully contrived to deceive and mislead, sufficiently declare the grand object of *these* disturbers. Men are sworn to obey the commands of every outlaw, who calls himself, captain Thresher!

Of what nature such commands may be, or who is, or who hereafter may be captain Thresher, and by what authority he is set up, no one can tell. But the experience we have had of enormities, which had a similar beginning, fully declares the mischief, that lies concealed in the general words of such unlawful oaths; and the unfortunate men upon whom these oaths are forced should be aware of this.

Gentlemen, the government is anxious for your happiness, and determined to support you with all its might and with all its means, until your alarms shall be composed. It is desirous to correct such evils early and whilst they are corrigible; and to restore that tranquillity, without which whatever you possess can be of little value. It has, therefore, hastened, overlooking all the difficulties of times and seasons, to throw open the doors of this court, that we may here admit all who suffer under the apprehensions of this deluded rabble—that we may hear their complaints, redress their injuries by due course of law, and in doing so dispense justice with mercy.

Gentlemen, his grace the lord lieutenant, also, to give you the fullest assurance of his protection and support, has spared from his councils, and sent hither to advise and assist you, the highest officers known to the law—men dignified in station—You will soon find them also to be eminent in talents, and most sincere in their zeal for the public service.

Gentlemen, it appears, that a report had been propagated, and generally believed, that the statutes made against tumultuous risings to the terror of the people, and that the laws which were enacted to prevent riot and insurrection had expired, and were no longer in force. I think it therefore necessary to declare from this place, that these laws are unexpired and are in full force; and therefore under the statutes, to which I allude, if any person or persons, having his or their body or bodies, or face disguised, or wearing a dress, or badge, not worn upon their lawful occasions, or assuming an unusual name, shall rise or assemble by day or by night, to the terror of the people, he and they is and are punishable as for a high crime and misdemeanor, and there is scarcely any act, which they can do, when so unlawfully assembled, to injure the person, habitation or property of any man, that is not punishable with death!

—The magistrates are bound by the duty of their office, where outrages of this sort are committed, to send out summonses and call before them every person who they have reason to believe can give information relative to such assemblies, the persons composing them, and the offences which have been committed. —The magistrates are bound to apprehend all such persons as they may receive information against, and if the person summoned shall refuse to give information, he is to be imprisoned in the common gaol, until he submits so to do, and he is to be bound in a recognizance to prosecute. The magistrates and peace officers are bound to disperse, resist, oppose, and apprehend all persons concerned in such unlawful assemblies, and for that purpose they have a right to call upon every man in the community to aid and assist them; and it should be known, that if any man, so called upon, shall dare to refuse, he is liable to be punished by fine and imprisonment. And in order fully to protect the magistrates

and all persons acting in aid of them, it is provided, that if any wounding, maiming or killing shall ensue the attempt to disperse and apprehend such unlawful assembly, the magistrates and all persons acting with them, are discharged and indemnified to all intents and purposes whatsoever; and in addition to all this, it is enacted, that compensation may be made to persons injured in their property, and the grand jury may present the amount thereof to be levied on the barony, half-barony, parish, or townland, where the offence was committed, so as further to punish the perpetrators of the mischief, by making them contribute to the expence, which has been thereby incurred.

Thus, gentlemen, you see, there are laws, with the severest sanctions, levelled at the evil now on foot. Besides, you have a vigilant government, commanding great armies, and otherwise strong in public confidence, ready to exercise all its energies in maintenance of those laws, and in protection of the good and peaceable inhabitants of the country. The legal powers of the magistrates are ample, to discover offenders, and to bring them and their accusers to the bar of this court; and within this court, I cannot fear, that any branch, or department of it will be wanting in its duty.

But, gentlemen, it should be remembered, that the most perfect constitution, and the best laws on earth cannot, of themselves, preserve or restore good order. Without these walls, they require to be administered by the magistrates and peace officers, with ability, with activity, and courage;—and within these walls, by the court and the juries with justice and with fidelity. And, gentlemen, if through the supineness of the magistracy and peace officers, or the distractions of the county, through a long contested election, disorder has gained strength, this is not the fault of the law—nor the default of the government:—It is right that the blame should be laid where it ought to rest, and there only.

I trust, that the magistrates of this county have made provision for the due administration of justice in this court.—I trust also, that what passes here may bring back thoughtless men to reflection, and wicked men to grace—that so they may meet the sacred festival of the nativity of our Redeemer, as it advances, according to his will, and according to his holy word, with sincere sorrow for past sins and past offences; and a firm resolution to repent and amend: and that with the new year, men so near being lost may return with blameless lives to their peaceful labours; and our best hopes will be realized, if abused and misguided men will only have the sense to consider those who give them this advice, as their friends, and all who would have them reject it, as their mortal foes.

James M'Phadeen and William M'Phadeen were indicted for that they on the 18th

of October, in forty-sixth year of the reign, at Minola, did knowingly, maliciously, and feloniously, publish and deliver a certain message, tending to excite unlawful combination and confederacy, under the name and denomination of "Threshers" for unlawful purposes, and for the disturbance of the public peace, against the peace and statute.

The prisoners pleaded Not Guilty; but refusing to join in their challenges, James M'Phadeen alone was put upon his trial.

The *Attorney General* stated the case on behalf of the Crown.

Right Hon. *Dennis Browne* sworn, examined by Mr. *Solicitor General*.

Are you a magistrate of this county?—I am, Sir.

Do you reside in this county?—I do.

Have you resided in this county for the last year?—I have, but was occasionally absent attending my duty in parliament.

Have you been resident in this county for the last four months?—I have constantly.

Has this county been during that last period in a state of tranquillity?—The disturbances of this county commenced in the barony of Tyrawley, about a year from last November; they remained stationary there till last August, when they made their way into the barony of Gallan, from which they made their way into Clonmorris and other baronies.

In what manner do these disturbances exhibit themselves?—I speak from hearsay and information received on oath as a magistrate, and from the general rumour of the country. The first object of the association was the reduction of tithes and priest's dues; when it travelled into this part it assumed that, and also another shape, that of attacking the wages of weavers and other artificers, and latterly farmers. In different stages of its progress it professed different objects, all kinds of payments, whether of tithes, industry, labour, or farming—assemblies of people collected in disguise and wearing badges and armed, appeared in different parts of the country. It showed itself in posting up written notices, exciting people to rebellion under various different pretences. When I took steps in different parts to stop the consequence of these notices, by tearing them down and offering rewards, they adopted another mode of exciting disturbances, by delivering messages in the chapels, threatening the priests, and calling upon the congregations, that if they did not lower their dues, avoid the payment of tithes, and alter the wages of labourers, the Threshers would visit them; that the priests might have their coffins prepared—and that the flesh would be torn off their bones, which messages have had more effect in spreading the mischief, than any mode which was before resorted to.

Mr. *T. Moore*. My lords, I object to this evidence being admitted against the prisoner.

Mr. *Solicitor General*. We produce this evidence to show that there is a disturbance in the country, and what the nature of it is. We shall afterwards show how far the prisoners were concerned in it. You stated, that one part of these messages was, to reduce the dues of the clergy.

Mr. *Browne*. A great and leading object.

By what name did this association pass in the country?—By the name of Threshers.

Under whose warrant was the prisoner at the bar committed?—Under mine.

Are you able to say, whether after the apprehension of the prisoner there was any increase or continuation of the practices you have described?

Mr. *T. Moore*. My lords, I submit, whether such a question should be put to the witness; it does not lead to any fact against the prisoner.

Mr. *Solicitor General*. Hitherto, my lords, we have not enquired as to the prisoner, but respecting the general state of things. If there be any doubt respecting this particular question, I will waive it—and put one more general. What has been the state of the county since the 21st of October? has there been any alteration in the state of things?—A very material one.

Of what nature was it?—Of a nature beneficial in the highest degree to the public peace, in so much that I stated to government, that the disturbances had ceased in the entire of the country of which I had the management.

Did that effect take place in the neighbourhood where this man was taken?—It did, and the disturbances began in that barony.

Thady Thornton sworn—examined by Mr. *Solicitor General*.

Where did you live in the month of October last?—In the town of Minola.

Was the neighbourhood of that town quiet, or disturbed last October?—As I heard and saw, it was very much disturbed.

Did you see any of the persons concerned in the disturbance?—I did. They came to my house on the night of Tuesday, before the 14th of October, they took me out of my house naked, and brought me into the street.

Were they many in number?—I did not count them; but they had the appearance of forty or fifty.

Had they any particular dress?—They had white shirts over their bodies and handkerchiefs over their hats and faces.

Do you recollect the Sunday after that?—I do; I think it was the 14th of October.

Do you recollect seeing any particular person that day?—I saw the prisoner James M'Phadeen, an old neighbour of mine; he came to me, and asked me, was I sworn to go to any place that day. I said, I was not, and if I was I would not go, as it was not proper. He said, that a party came to his

house in disguise, and swore him to go to the chapel to the town where I live, in Minola, and to go to the clergyman. I said, that oath was not binding by laws of God, or king, and if he had a mind he might break it. He said, he could not, as he was in dread. I then went to mass, and after Mr. Nolan came out to shake the holy-water among the people there assembled.

Court. Was this after prayers?—It was when he shook the holy-water there were some prayers before and some after it; it is towards the latter end of the service.

Mr. *Solicitor General*. Was it during the service?—It was during the service; he told the priest he was sworn to come to him.

Look at the dock; do you see James M'Phadeen there?—I do; there he is, next to the gaoler.

What did he tell the priest?—That he should marry persons for half a guinea, baptize for nineteen pence halfpenny, read mass for thirteen pence, and at any house to which he came to confession, if he got hay and oats for his horse to take it; but if not, to go away, on pain of suffering for it.

When this man told you he was sworn by the Threshers to go of this message, what did you say to him?—I told him, if it was my case, I would not go; that it was neither binding by the laws of God, or the country; he said, he was afraid.

What more did you say to him?—I said, it was considered by the gentlemen of the country as a piece of business contrived by those who appeared in it and were going about.

What did you mean by that?—That it was themselves were laying down these oaths and framing messages, and that no persons compelled them, but they themselves went about at night and went of the messages.

Was Mr. Nolan threatened with any punishment?—He was.

Of what sort?—I cannot say, but that he was told, he would suffer if he would not obey.

Was the congregation there at the time?—They were, and there are nine of them here.

In what parish was this?—In the half parish of Minola.

Is that the prisoner's parish?—No.

How far distant is the prisoner's parish?—Two miles.

Thady Thornton cross-examined by Mr. *T. Moore*.

I suppose you are a person who have a great regard for your oath?—Why should I not.

And do you not think, that another man should have respect for his oath?—Yes, every honest man should have respect for his soul and his oath.

Court. Only for a legal oath—he should pay no regard to any other.

Mr. *T. Moore*. But there are persons who pay no regard to a legal oath?—There are such people.

You thought it no inconvenience to go to the chapel at Minola?—No.

The prisoner does not live much farther from it than you, and why should you think it an inconvenience to him?—I attended that chapel for twenty-two years, and never saw him there before.

But it was not too far to go to hear the word of God?—No.

Therefore there was no crime in that?—I make no crime of it.

You are well acquainted with James M'Phadeen?—I am these twenty-two years.

Do you not think him as good a neighbour as yourself?—To be sure, as a neighbour.

Have you heard, that rewards are to be given to persons who convict others upon these trials?—I have.

And you expect none?—I do not; I would do my duty without it.

He told you, that his neighbours, *the Threshers*, came to him and swore him?—I did not say *his neighbours*, but *the Threshers*.

But he came and told you what he was to do, and you advised him?—I did, as an honest man, which I always thought him.

If the priest of the parish said the same, would you believe him?—I would.

Who is the next magistrate to you?—Mr. Lynch.

How far is Mr. Browne from you?—Ten miles.

And you went that distance, rather than go to a neighbouring magistrate?—Why should not I, when Mr. Browne came to me, and summoned me to give information.

Did you ever see him before?—To be sure; do you think I was blind.

Did you ever speak to him before?—Never in my life.

A Juror. When you recommended the prisoner not to go, what reason did he give?—That he was put to his oath by these insurgents, and was afraid not to go.

Mr. T. Moore. Do you believe he was afraid?—I believe what I have said; but I did not ask him particularly.

Jurors. Did he tell you, why he was afraid?—He did not.

But was he not afraid?—He might, as I have been myself.

Did he ask you, whether you were sworn by them?—He asked me whether I was when the people were with me.

Had you told him of that?—The whole country knew it.

Did you mention it to him?—I did not.

What brought him to your house?—To rest himself.

Is that on the way to the chapel?—No; but he was there in the morning, before chapel began.

Then he went out of his way to rest himself?—It was only a few yards from the road.

John Burke sworn—Examined by Mr. Attorney General.

Do you know James M'Phadeen?—I think I do, if I saw him.

Look at the dock, and try if you see him?—I saw this man [pointing to William M'Phadeen,] but do not know his name.

Did you see him at Minola chapel?—I did.

Who officiated there?—Father Patrick Nolan.

Was it upon a Sunday?—It was.

Did M'Phadeen do, or say any thing?—

When father Nolan came to shake the water, he stood up, and said he came with reluctance, being sent by a posse of people, who came to his house a few nights before, to desire that he should marry for half-a-guinea, baptize for three sixpences, go to confession free, but if he had oats for his horse to take it, if not, to go away.

Did he say, what would be the consequence?—That is all I heard him say.

Did he say what the posse of people was?—If he had, I would have taken him, till he named them.

But did he say, what posse of people?—These men that go about in white, as they go about in our part.

John Burke cross-examined by Mr. T. Moore.

Was this a public chapel?—It was not; it was a private house, used as a chapel; we have no other chapel.

Do you not believe, that this man himself suffered from the Threshers?—No; but I heard that another man in his village did suffer.

Mr. Attorney General. Was that the usual place of celebrating mass at Minola?—I never saw mass celebrated in Minola, but in Jennings's house, or the miller's house.

Francis Ivers sworn.—Examined by Mr. Solicitor General.

Do you know James M'Phadeen?—I believe I would, if I saw him: this is the man. [Pointing to the prisoner, James M'Phadeen.]

Were you at any time at mass in Minola in October last?—I was there when mass was celebrated in Mr. Jennings's house.

Is that the usual place for celebrating mass there?—It is: there is no other place.

Did you see James M'Phadeen there?—I did.

Did he say any thing?—He said, he was sworn by a posse of people in disguise to come to Minola, and tell Father Nolan to marry for half-a-guinea, to baptize for three sixpences, to say mass for a shilling, to go to confession free; but if he got oats to take it.

At what time of the mass was this?—When the priest shook the holy water.

Francis Ivers cross-examined by Mr. T. Moore.

He told the priest he was not to demand more than certain charges?—He did.

But how did that tend to create tumultuous assemblies.

Mr. Baron George. When the evidence is,

closed, I will hear you to any point of law, and we can then discuss it.

Mr. T. Moore. Do you think you have stated the message truly?—I think I have, as he mentioned it.

Court. Did he tell the priest, who sent that message?—He said, he was sent by a posse of people in disguise.

Jurors. Was he in dread, if he did not deliver it?—He said, he came with reluctance.

Was he afraid?—It's like he was.

Did he say he was?—He did not: he said, he came with reluctance.

Do you know his character?—I do not; but I never heard any thing bad of him.

Do you suppose, that if a party of men came to you, you would be induced to act as he did?—I do not know whether I would or not.

Matthew Lally sworn.—Examined by *Mr. Attorney General.*

Do you know James M'Phadeen?—I think I would.

Look round and try, if you see him?—I believe this is the man [pointing to William M'Phadeen]. I never saw him but that once.

Was John Burke at the chapel that day?—He was.

And Francis Ivers?—He was.

Upon what Sunday was it?—In the middle of October.

Who was the priest that officiated?—The Rev. Patrick Nolan.

Did you hear any man make a declaration to the congregation that day, when mass was over, and while the priest was shaking the holy water?—I did. He bid the congregation not to disperse, for he was sent there, and had a few words to say to them and the rev. Mr. Nolan. He desired Mr. Nolan not to go on till he told him. He said, he was sent there of a message to Mr. Nolan, by a posse of people in disguise, to tell him not to take more than half-a-guinea for marriage, thirteen pence for mass, and nineteen pence halfpenny for christening; and if he went to confession and got oats, to go quit.

How soon after did you give information to Mr. Browne?—The day before November day.

[Not cross-examined.]

Thomas Boland sworn.—Examined by *Mr. Solicitor General.*

Where do you live?—In Minola.

Do you know James Mac Phadeen?—I saw him the day he came to Minola.

Upon what day was that?—On a Sunday.

In what month?—In October.

What did he say that day?—When the prayers were over at mass, and the priest was shaking the holy water, James Mac Phadeen said, he was sent with a message against his will to the priest. He said he was ordered to tell him, not to charge more than half-a-

guinea for marriage, thirteen-pence for mass, and nineteen pence halfpenny for christening. He said, he should lower his fees, and sinking his voice said, "if not, to have his coffin convenient."

Did you hear him say that?—He was the next man but one to me, and I heard him distinctly.

Look at the bar, and say, if James Mac Phadeen be there?—This is the man [pointing to the prisoner]; and I am sorry to see him here, or that he was there at all.

Did you give information to a magistrate of this matter, or did a magistrate go to you?—Mr. Browne came to me, and I have been attending here at great inconvenience and loss.

Do you know Matthew Lally?—I do; he is my brother-in-law.

Was he at the chapel that day?—He was.

Thomas Boland cross-examined by *Mr. T. Moore.*

Do you not believe, that if such a message was delivered, it was by compulsion?—He said at first it was against his will.

Do you not believe it was the fact?—I cannot say; you may form your own belief of it.

Is it not the custom to compel quiet persons to deliver such messages?—I believe he was driven to it, because I never saw him at that mass before: it was not his chapel.

[Case closed on behalf of the Crown.]

PRISONER'S DEFENCE.

Matthew Willes sworn.—Examined by *Mr. T. Moore.*

Do you know the prisoner at the bar?—I do.

Do you recollect at any time his house being attacked?—I do.

In or about what time?—It is, I believe, about seven weeks past.

What day?—I cannot tell the day, but it was a week day, and the next Sunday he was charged to go to the chapel.

Was Sunday the next day, or three or four days after?—It was three or four days after.

Is it not the custom with the Threshers to send quiet and peaceable men to go of their messages?—I believe so.

Jurors.—How do you know they came to the prisoner's house?—Hearing of the disturbances in the country, and being of a different persuasion from them, I got afraid of them, living in a remote part, came to live next door to the prisoner, four years last May. I was in my bed, and about twelve o'clock I heard a mob, as I suppose, coming to James Mac Phadeen's; and I heard an uncommon screech, such as riotous mobs generally use. I said to my sister, "These are the Threshers or Shakers, come to Jemmy's." I was in dread, being one of the people called Protestants, and thought I could not miss of being carded any way. I said, I would get up and

make my escape. She said the house was surrounded, and it was better to stay within. I rose and put on my clothes, and looking out, could see the people, the night being bright. There were forty of them. I staid, with the door open, and they appeared to me to push open his door. They went in, and I heard the sound of voices, and cannot tell what they said. They spoke, in Irish, about half-a-guinea. When they went away, the man came and asked, were we asleep: we said not; he asked, did we hear the transaction? I said yes.

Do you know the prisoner's character?—Awhile hence I will speak of that. He asked, Did we hear any thing? I said, Yes. I asked what they said about half-a-guinea. He said, they asked him fiercely to go to Nolan and desire him to marry for half-a-guinea, which was the usual custom ever till now; to baptize for nineteen pence halfpenny, instead of five shillings and fivepence, which was the usual custom, and one shilling and a penny, instead of half a crown, for mass.

You are convinced the prisoner was compelled?—I am satisfied he was reluctant. He said, it was the best way to pursue these people and take their lives.

Is he a quiet man?—I believe him to be a quiet, industrious man. Also, if there be a character wanting, there is Mr. Patrick Lynch, of Clogher, and Mr. George Clendenning.

Matthew Willes cross-examined by *Mr. Attorney General*.

Did he pursue these people, so as to know them?—He did not.

Why not, when he came out of his house and expressed a wish to follow them?—He was afraid of the law and the Threshers.

What was his fear of the law?—Because he was in the greatest trouble. He did not like the troubles.

Which was he most afraid of?—He was afraid of the law and the Threshers both.

Was he equally afraid of both?—He was afraid of them, as they threatened him.

How many went with him to the chapel?—He went alone.

You say the transaction at his house was three or four days before the Sunday, when he went to the chapel. Did he in the mean time go to any magistrate to give information?—I believe he went to Charles O'Malley.

Why do you believe that?—Because he was telling me the case, and I advised him to go over to the hon. Denis Browne.

Did you tell him to go to a magistrate?—I did.

Did you tell him to go to the chapel?—I did not: but would have gone myself, if they had sworn me;

Fear, infernal name,
Makes eternal flame!

He was afraid of his soul on the one hand, and his back on the other.

The prisoner lives in a lonely place?—There are only six houses in it.

Are there many Threshers about it?—I cannot say. I cannot tell who they are, or where they may come from. I know nothing of them, being of an opposite persuasion.

Are there many Threshers in that part of the country?—I believe not. I knew this matter would be brought to the law; and if Protestants were found in these facts, it would surely bring scandal and disgrace upon their cause.

You seem to be a very zealous Protestant?—I deny the doctrine of transubstantiation.

Did the prisoner go to Mr. O'Malley and give information?—He told me so, and three more.

When did he tell you so?—The day after; but whether he told me so or not, I knew it myself.

Upon your oath, was Mr. O'Malley in the country at that time?—I cannot say; they went off to go there.

Then he could go to a magistrate without fear, and yet he went to the chapel through fear?—I cannot say.

You did not advise him to go to the chapel?—No; and I give you a reason; I was afraid of this coming to the law.

Are you a preacher?—No: but a hearer.

Could he not have gone to a magistrate and obtained protection?—He might; but I cannot reason upon that.

Matthew Willes re-examined by *Mr. T. Moore*.

You said, the prisoner and some others went off to go to Mr. O'Malley?—They did; three of them.

You thought they went?—I thought so; I heard they went; I was wondering at seeing them get ready, and asked where they were going, and they told me where.

Patrick Lynch, esq. sworn.—Examined by *Mr. T. Moore*.

Do you know the prisoner, James Mac Phadeen?—I do.

What is his character? is he a quiet, peaceable man?—I never heard any thing else of him.

Does he live in your neighbourhood?—He does.

How long have you known him?—Fourteen or fifteen years.

Did you know of his being concerned in the last rebellion?—I did not.

Patrick Lynch, esq. cross-examined by *Mr. Solicitor General*.

Have you not heard that many persons who before had the character of quiet and honest men have yet engaged in the *threshing* business?—I have.

And many engaged in it, who were not suspected before?—Yes.

Mr. T. Moore.—My lord, I submit that the intention with which the message was deli-

vered is a question for the jury. The prisoner is charged to have done the act *maliciously*, and therefore the jury are to determine whether it was intended to excite tumult.

Mr. *Attorney General*.—Where a message is delivered in the presence of a congregation to a priest from the Threshers, which message relates to the professed object of the Threshers, and the priest is told to have his coffin prepared if he does not reduce his fees, can it be said that it does not tend to promote and encourage unlawful combination and confederacy? for that is the charge in the indictment, not that it was calculated to excite tumult. As to the defence of compulsion, it is quite out of the case.

Mr. *T. Moore*.—My lord, we would examine Mr. O'Malley, but he is not now in court.

Mr. *Baron George*.—I will think no time wasted in a case of this importance. If you think Mr. O'Malley can serve you, I will wait till midnight that you may send for him.

Mr. *Dennis Browne* again examined by Mr. *Attorney General*.

Was Mr. O'Malley in the country at the time of the transaction stated by Willes?—I know Mr. O'Malley as well as my brother, and to the best of my knowledge, belief, and opinion, he was in England.

Mr. *T. Moore*.—I beg leave to state what I understand the fact to be: that the prisoner's father went to Mr. O'Malley's house to give intelligence of the matter, but it was after the Sunday when the message was delivered.

Mr. *Attorney General*.—I admit the fact to be so.

SUMMING UP.

Mr. *Baron George*.—Gentlemen of the Jury;—In this case it is necessary to direct your attention to the charge which the prisoner is called upon to answer—[here his lordship stated the indictment to the jury]. The offence in the indictment is made a capital felony by the act of 27th Geo. 3, c. 15---[here his lordship stated the clause of that act]. Upon the part of the prosecution five witnesses have been examined; all of them relate to you a fact, which the prisoner in his defence does not contest; two of these witnesses, however, go further than the others---one of them has sworn, that the prisoner not only told the priest at the chapel, in the hearing of the congregation, the prices to be charged for the offices he mentioned, but also informed him, that if he charged any greater, he would suffer; and the last witness examined stated, that he stood within one of the prisoner at the time the message was delivered, and that the prisoner added in a low voice, that if the priest did not act accordingly, "he should have his coffin convenient." This was not heard by the other witnesses, and it is accounted for in that manner. The defence does not deny the delivery of the message, but the defence which is made will admit of seri-

ous consideration before you decide the case; and upon the evidence two questions present themselves directly to you; the first is, whether this be a message tending to excite unlawful combination, within the intent and meaning of the statute; and the second is, whether such compulsion as has appeared in evidence in this case will justify or excuse that act so done: these questions it will be your province to decide, subject to the advice which the duty of my office calls upon me to give.

It appears, that tumult and insurrection had arisen in that country, which had for one of their objects the lowering the dues claimed by the priest, by force and violence. It does not appear that this combination had before the day laid in the indictment spread into the parish whereof Mr. Nolan was the priest; and you will judge whether it was not the object of the disturbers of the peace, who so united and swore the prisoner, that this combination should be excited amongst the flock and parishioners of Mr. Nolan? It would seem, they were aware of the illegality, and of the danger of going themselves, openly to the chapel, and delivering the message to the priest; and therefore they engage the prisoner so to do, under circumstances which they expected would procure him impunity, or compassion, for violating the law. Gentlemen, had those persons engaged the prisoner, and if in pursuance of that engagement, the prisoner had gone privately to the priest, and delivered him this message in private, such an act, however otherwise criminal, might not maintain this indictment; but you are to consider, whether delivering this message publicly, in the hearing of the congregation for which the priest was then officiating, had not a direct tendency to excite that congregation to be, and become of the unlawful combination, from which that message came; this seems to me to be matter of fact fit for your consideration, and to be the only question that can well be made in the present case.

It remains, that I should inform you, what sort of duress or restraint will excuse a man in a court of law, who has done any act, which is by law a felony; and this is matter of law, upon which the judge is called upon to give his opinion to the jury. There is no doubt, that if a man, whilst the terror of immediate death is held over him, shall, for the immediate preservation of his life, do an unlawful act, this may excuse him, because under such circumstances the act done cannot be considered to be his act, inasmuch as he is not a free agent. But it must appear, that the act was done at the very time the restraint was imposed, and from a motive of self-preservation. And this is wisely the rule of law, for otherwise the greatest crimes might be committed with impunity. If a promissory oath imposed on a man to commit a felony at a future time, were to be received as a defence upon trial, the inconveniences would be mon-

strous beyond all endurance, so that the law does not allow force as a defence *unless it be immediately operating at the time of the act done*, depriving the party of his own free will and agency; as soon as he is delivered from the restraint, there is an end of the defence. But here this man had three or four days to consider what was right and lawful for him to do—whether he was to obey the law, or obey the Threshers? whether he was to fear the law, or fear the Threshers? and for the choice he has made he is answerable; and has made himself subject to the same punishment, as if one of that association had, instead of making the prisoner the instrument to convey the message, delivered it of his own authority. Therefore, in my apprehension, the prisoner cannot excuse himself from the charge of felony, by saying he committed it in preservation of his life; because his life was not in danger at the time of the fact done.

Gentlemen, all these facts and circumstances are before you; you I hope, fully understand the statute, and the indictment founded thereon; and I think the evidence you have heard is fit evidence to go before you to consider, whether it does not maintain the present indictment. You form the tribunal, which the constitution has entrusted with the decision of these matters. There seems to be no controversy respecting the evidence, and you will find according to the truth, and as your consciences may direct.

The Jury deliberated for three hours, and returned a verdict, *Not Guilty*.

Wednesday, December 10, 1806.

COLL FLYNN, CHARLES FLYNN, LAURENCE FLYNN, JOHN CALLAGHAN, DANIEL CALLAGHAN, JAMES LAYDON, PATRICK BARRETT, JOHN FLYNN, DANIEL REGAN, THOMAS O'HARA, and EDMUND DURNEEN were indicted for that they on the 16th of November, 1806, wickedly, maliciously, and feloniously did conspire, confederate and agree together wilfully, feloniously, and of their malice prepense, to kill and murder Thady Lavin, against the peace and statute.

They severally pleaded not guilty, and said, they were ready for trial, except Edmund Durneen, who said he had been arrested only the day before, and therefore was not ready for trial, and upon the suggestion of Mr. Baron George, and upon the consent of the attorney general his case was postponed.

The following jury was sworn for the trial of the other ten prisoners.

Thomas Kirkwood	Richard Leviston,
George Gildea,	James Clarke,
Francis Goodwin,	William Ferris,
Thomas Hare,	Edward Malley,
Robert Fair,	Orne Lundy,
Stewart Ferguson,	William Malley.

To whom the prisoners were given in charge.

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Mr. Solicitor General.—Gentlemen of the jury; in this case the prisoners at the bar stand charged with having conspired to murder the late Thady Lavin. Such a conspiracy was by the statute law of this country in the year 1796, made a capital felony; and in consequence of the frequency of such crimes in seasons of public disturbance, it has been further provided by a subsequent act of parliament, passed in the memorable year 1798, that even to “solicit, encourage, persuade, or propose, or to endeavour to persuade any person to commit a murder,” should also be a capital felony without benefit of clergy. Such are the dreadful penalties which the law denounces against the mere meditation of this most atrocious crime, even where the crime itself has not been committed. Judge, then, how justly those penalties attach upon persons confederated for such a criminal purpose, when their conspiracy, as in the present case, has been effectual and successful, and when the crime itself has been committed with every circumstance of atrocity, that would aggravate it, if it were capable of aggravation.

Upon the enormity of such an offence, I should not think it necessary to expatiate, when I address men of ordinary feelings and common understanding—but enormous and aggravated as the crime is, you would not be called upon, on this extraordinary occasion, to investigate it, if this were merely one of those cases, in which the king too frequently loses a subject, and the community a member, in consequence of the violence or malice of the individuals accused. Had it been merely so, it would have been reserved for investigation at the ordinary period of the assizes; but that period of enquiry has been anticipated, and you have been called upon, on the extraordinary occasion of this special commission, to decide upon the case of the prisoners, because the offence imputed to them immediately flows from, and intimately connects itself with, that dangerous and mischievous association, which for some time past has infested, disquieted, and disgraced your county. It is because such associations naturally and necessarily lead to the commission of such crimes, that the code of laws, which have been enacted to suppress illegal confederacies, has wisely, and I will add, humanely equalized, in point of punishment, all offences which can be committed in active furtherance of the purposes for which the confederates have associated. The nature of those laws, and the dangerous tendency of illegal combinations were amply and ably discussed by his lordship in his charge to the grand inquest of the county, and by my learned colleague the attorney-general in the first case, which yesterday was brought forward for public investigation. Whoever had the advantage of hearing what fell from those high authorities must be satisfied, that, from the moment an unlawful confederacy of men has commenced, every active step which can be taken in pro-

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execution of their views, is assimilated to those higher crimes, to the commission of which it so necessarily leads; death is the dreadful and the common punishment of all. A man, who looked upon this system of laws, without reference to the causes which produced it, and the occasions upon which only it is brought into operation, might be induced to consider this indiscriminate application of the highest of all punishments to every offence, as a reproach to the legislators who enacted it; but upon due consideration, whoever reflects upon the nature of public tumults must be satisfied, that the great object of human punishment, *the prevention of crime*, is most effectually provided for, by meeting the spirit of insurrection in its origin, with the vigour of wholesome law, and by denouncing as worthy of the greatest punishment, all offences, whose natural tendency is, to produce the greatest crimes; therefore the mere assemblage of men, so confederating, is made a high misdemeanor by those laws; but when once the confederacy is formed, the supplying arms, or any other means to the confederates, the abetting them in any of their objects, the sending of their threatening messages, the circulation of that system of terror, the administration of any of their unlawful oaths or engagements, are all capital felonies, and the law with equal severity, pronounces death to be the common punishment of all such offences.

To a reflecting mind, the wisdom of such a system is perceptible, without any example. Even in the case of individuals, the natural tendency of the lesser crimes to produce the greater is proverbial, and familiar to every man's experience—one immorality naturally leads to another—the restraints of conscience once relaxed, and the obligations of duty once forgotten, the progress of the heart from one offence to a greater is easy and rapid. But in the case of associated criminals, it is something more, it is necessary; when such a confederacy is once established, concealment becomes necessary to their safety, and the administration of unlawful oaths which bind them to each other by obligations of secrecy, is adopted as an expedient which at once provides for their impunity and recruits their numbers; money and arms are wanting to their power, and the midnight plunder of both is the next violation of moral duty and of public law, into which they are precipitated: active and loyal men become formidable to the confederacy, and individuals of their own society, who from feelings of compunction repent of their folly and inform against their associates, become still more obnoxious to them. The assassination of the loyalist, or the informer, follows next: thus the deluded wretch, who by some abominable incendiary, is taught to believe, that he associates with others for the redress of grievances, and the reform of abuses, gradually involves himself in the commission of every crime which

afflicts society, and which the laws denounce, and rapidly familiarizes his mind to every species of moral turpitude: the profanation of an oath, robbery, burglary, and murder become the natural and necessary consequences of the confederacy once formed; and therefore most wisely and humanely has the code of laws, enacted to suppress such associations, encountered their mischief, by pronouncing death to be the punishment of every crime committed in furtherance of their objects.

That murder is frequently the consequence of such combinations is tragically illustrated by the facts of the case about to be submitted to your consideration. Before I state to you those facts, let me observe, that the mischief of such associations may not always stop even at murder; associated for one purpose, those deluded wretches may easily be made the instruments of another. If at present their objects are not treasonable, they may however readily become so, whenever occasion furnishes an opportunity to designing and wicked men to make them so:—any bad impulse may be at any moment given to an association formed for unlawful purposes, and connected and preserved by the commission of crime. High treason, the greatest of offences known to our laws, which implies the meditated murder of the sovereign, which aims at the destruction of our political constitution, the subversion of civil society, and the confusion of laws and property, is the ultimate mischief, which may not unreasonably be expected to flow from such confederacies, if not effectually counteracted. Therefore, it is, that at this extraordinary season of the year, his majesty's government has assembled us, at this special commission, to carry into speedy execution those wholesome and vigorous laws against unlawful assemblies, which the crimes and follies of the deluded people have called into operation. Therefore it is, that you, gentlemen of the jury, are now impanelled to investigate a charge of conspiracy of murder, not merely on account of the abstract atrocity of the crime, but because it has been generated by that abominable and profligate association, fruitful of crimes, which it is the common interest and common duty of all loyal and honest men to encounter and extinguish.

The guilt imputed to the prisoners at the bar, by the indictment which you have heard read, will be brought home to them by that species of evidence, which is called circumstantial. It is often the only proof which can support a charge of murder itself, and in such charges, it is frequently the most cogent, and least fallible of all evidence—of this there have been repeated instances; but where the crime charged is a conspiracy to murder, from the very nature of the offence, it is the only evidence which can be expected, unless some associate, by betraying his confederates, supplies to the prosecution the suspicious testimony of an accomplice. In this particular instance, if my instructions have not deceived

me, you will find a chain of indisputable circumstances, each part connected with the other, tracing the progress of the crime from its commencement to its consummation; shewing an adequate motive for its commission, exhibiting conduct in the prisoners calculated to secure its perpetration—conduct, both before and after, inconsistent with their innocence, and which according to the experience which we have of human character, it will be impossible to account for, except upon the supposition of their guilt.

On the 13th of September last, Thady Lavin, who had been one of the association, called Threshers, came before Mr. Ormsby, a magistrate of this county, and voluntarily gave information against a great number of his accomplices, and amongst others against John Flynn, the son of Laurence Flynn, and the near relation of Coll Flynn, now prisoners at the bar.—In the same informations, he also swore against two persons of the name of Durneen, one of whom is the son and the other the nephew of Edmund Durneen, a prisoner now in the dock, and charged in this indictment, but who is not at present upon trial, he having alleged, that in consequence of his recent apprehension, he cannot be prepared until to-morrow. Upon these informations so sworn, Mr. Ormsby issued his warrant. Several of the persons charged were apprehended, and were committed to prison. Several others, and amongst them the two Durneens, and one John O'Connor, still remain at large. Shortly afterwards, it became notorious that Lavin had sworn those informations, and it became unsafe for him to remain in the country, exposed to the fury and vengeance of the Threshers. Mr. Ormsby, having communicated these matters to his majesty's government in Dublin, received immediate orders to give to this informer every possible protection, and in consequence of those orders, the unfortunate man was removed from Turneen where he had formerly lived, to a safe place in the village Crossmolina, where a military force was stationed; there he remained in perfect safety, waiting until this special commission should be sped, in order to support his informations upon the trial of the persons whom he had accused.

On the 10th of November, the different persons confined in Castlebar jail upon his information, attempted to escape from prison, by bribing the centinel, in which attempt they were defeated by the fidelity of the soldier, and the vigilance of the jailor: the period at which this attempt was made and frustrated is very deserving of your attention, and you will judge how far it bears upon the accusation against the prisoners. In four days after that attempt, on the 14th of November, Lavin with his wife went to their former habitation at Turneen, for the purpose of disposing of his property or removing it into the village of Crossmolina, where it might be protected. About that period, the county elec-

tion was to begin and Mr. Ormsby was obliged to leave his own house, and go to the distant town of Ballinrobe, where the election was held: whether it was owing to that circumstance or what other, I stop not to enquire, but certain it is, that about this time, the vigilance before used for the protection of Lavin was relaxed, and the unfortunate man was most imprudently permitted to leave the place of his safety upon the occasion I have mentioned: he remained at Turneen that day, and on the next day but one, he and his wife attended the funeral of a person who was buried in Crossmolina. On their return from the funeral, they unfortunately met Coll Flynn, one of the prisoners, who addressed them, entered into a conversation with them upon the subject of the property which Lavin was about to dispose of, and proposed to become the purchaser of it. If this circumstance stood alone, perhaps it would escape observation, but when connected with those which follow, possibly this interview between persons so situated may appear to you extraordinary; and that a familiar and friendly conversation should take place between the accuser and the near relation of the accused, even upon a matter of business, may require some explanation. The treaty proceeded; Coll Flynn was liberal in his offers, he acquiesced in the demands of Lavin, the bargain was made; Coll Flynn declared that it should not be a dry one, and proposed to Lavin that they should drink together. Lavin agreed, notwithstanding the remonstrances of his wife, whose suspicions appear from the beginning to have been excited by this extraordinary and unexpected invitation. Coll Flynn said, "We can have a naggin here at Oliver Roe's," which was a house of entertainment near at hand. You will see in the progress of the case, that it was not probably the intention of Coll Flynn, that Roe's house should be the scene of their festivity, for he only proposed, that they should drink a naggin there; they repaired to Roe's and for some reason, which does not appear, were refused entertainment there. Upon this, Coll Flynn said that they could get abundance of liquor at the house of Lawrence Flynn, another of the prisoners at the bar; and to this proposal, the weak and unfortunate Lavin consented, notwithstanding the repeated and importunate remonstrances of his wife whose alarms seem to have foreboded the meditated mischief. You will observe, that Laurence Flynn was father of one of those against whom Lavin had sworn, that his house was at some considerable distance, and that it was not a house of public entertainment. Hither they went, and what appears very deserving of attention, they found there assembled, the prisoners at the bar, Charles Flynn, Patrick Barrett, James Laydon, Laurence Flynn, John Flynn, and Edmond Durneen, the prisoner not now upon trial.

In this society, the unfortunate Lavin was

persuaded to sit down and drink—and I entreat you, at this stage of the case, to pause and consider whether it is a circumstance reconcilable to your ordinary experience, that a company of persons, of whom the greater part were the near relations and connexions of those against whose lives Lavin had sworn, should, without some secret cause, select that very informer, as the companion of their festive hours, receive him with friendship, and associate with him upon terms of conviviality. When you consider the natural feelings of men so circumstanced, and the almost instinctive abhorrence in which all the lower classes of people in this country hold an informer, you will be of opinion that such a meeting, at such a time, in such a place and between such persons is at least extremely suspicious. As you will reason, the wife of Lavin felt: her foreboding heart was visited with a prescience of the scene that was to follow; she urged her infatuated husband to retire—but she urged him in vain; she looked significantly at him, made signs to him, pretended that she was particularly anxious to return on account of her children, who had been left alone, and by every means in her power endeavoured to rouse the wretched victim from his infatuation. At this moment, the prisoner, Coll Flynn and Charles Flynn approached her, they sat down, one at each side of her, they threw their arms round her neck, embraced her with treacherous and false caresses, soothed her impatience, importuned her to stay, offered that a girl then in the house should be sent home to take care of her children, and promised that her husband should return with her shortly—she was compelled to yield, and the devoted Lavin, regardless of her solicitations, seduced by their importunities, and affected by the liquor, remained in the toils that had been spread for him. In a short time, the prisoner Durneen sent for the prisoners Daniel Regan and Thomas Horan, who upon his sending for them joined the company, as did also the two other prisoners John and Daniel Callaghan—Durneen himself soon afterwards retired from the company—the drinking proceeded and night came on—four of the company, John Flynn, James Laydon, Patt Barrett, and John Callaghan at different times left the house, the two latter said, that they were going to fish, and the two former took with them some women, who had been in the house. In about an hour two of them John Callaghan and Barrett returned with some fish, the others did not return—what was done, or contrived during the absence of them, and of Edmund Durneen, you may easily conjecture from what followed—in less than fifteen minutes after the return of John Callaghan and Barrett, the door flew open, five ruffians dressed in the habiliments of the Threshers, covered with white shirts and straw, rushed into the house; at their head stood Edward Durneen armed with a hatchet

one of those against whom Lavin had sworn, and nephew to Edmund Durneen, who had left the company shortly before;—four others followed him, armed with pikes and bayonets fixed on poles—one of them was John O'Connor against whom Lavin had also sworn—the others are as yet unknown. The moment that Lavin saw them, he knew his fate, he rushed towards an inner room—the ruffian with the hatchet pursued him, and clove him to the earth with repeated blows:—the wretched wife sprung to the relief of her husband, nature lent her more than ordinary strength; she seized the barbarian by the hair and brought him to the ground—the other monsters rushed upon their victim and dispatched him with more than thirty wounds: Durneen extricated himself from the woman—smote her to the ground with his hatchet, where his associates after stabbing her in several places left her for dead:—I pause for a moment, and call on you to contemplate the degree to which those associations deprave the human character. If I were asked what could afford the strongest evidence of the extinction of the moral sense and of the loss of every natural feeling I would answer, that the human heart must have arrived at its utmost possible depravity, when a being calling himself a man can lift his arm against the person of a woman—every generous feeling, every social affection, nay every natural instinct must first be banished from the breast. But to raise murderous weapons against the life of an unoffending wife,—who had sworn no informations, who had provoked no vengeance, whose only crime was, to have devoted herself in an attempt to save her husband and the father of her children,—transcends the ordinary limits of human wickedness and can only be traced as the necessary consequences of those infernal associations, leagued for other purposes, but precipitated by the nature of their confederacy into the commission of every crime.—This observation may appear to apply rather to the actual murderers, than to the prisoners at the bar; I return to them. While this dreadful tragedy was acting, not an arm was raised, not an effort was made, not an exclamation was uttered by one of the prisoners at the bar; I rest upon this striking fact—it appears to me decisive, and I think it must so appear to you. Suppose for a moment, that all other suspicious circumstances in this case were accounted for; that the original meeting with Coll Flynn was purely accidental; that the convivial intercourse between Lavin and the prisoners in the house of Laurence Flynn whose son he had accused was natural; that their caresses of his wife were undissembled; that their importunate anxiety to detain him was sincere and unaffected. Let all this be taken for granted and it will only make it the more extraordinary, that the prisoners at the bar should have remained passive spectators of this horrid massacre. That so many human be-

ings could look upon such a scene unmoved; that men bound by the laws of hospitality should see their guest butchered before their faces, without any interference; that so many *Irishmen*, of a nation supposed to be characterized by manly courage and a generous spirit, and certainly distinguished for prowess of body and physical powers, should without one effort, see an unfortunate man and a helpless woman mangled before their faces, is what no experience of the human character can account for upon ordinary principles, and what I fear, in dreadful anticipation of your verdict, is irreconcilable with every supposition, except that of their guilt.

You will hear also of their conduct after the murder. The assassins fled; no attempt was made to apprehend, or pursue them, or alarm the country. The bodies of the slaughtered man and wounded woman were almost immediately removed by the prisoners to Turneen, where the unfortunate Lavin had lived; and you will find, that on the following morning, some of the prisoners paid to the wretched widow a visit of condolence, of the motives and sincerity of which you will form an opinion. You will judge of the conduct of all the parties, both before and after the murder, and you will particularly consider by what means the assassins, who appear to have had no other object than the murder of Lavin, *were able to discover, that he was to be found in that house*, which of all others they had least reason to suppose that he would frequent.

Before I conclude, I avail myself, under the control of the bench, of this crowded auditory, composed so much of the lower classes of the people, to observe upon the wisdom of the legislature in providing, that such offences as you are now impanelled to investigate, shall not only be attended with the highest punishments, but shall be abortive and ineffectual.—In tumultuous periods, the murder of informers had always been a frequent crime, prompted not merely by the spirit of vengeance, but suggested by the hope of defeating the end of justice. To meet this dreadful mischief, the legislature in the year 1796, enacted, that when an informer has given written informations upon oath before a magistrate, if he should be afterwards murdered, those informations so given may be read upon the trial of the accused in evidence against them; thus do the wretches, who perpetrate so foul a crime, in the hopes of serving their confederates, in fact injure them most materially;—the informer himself being dead, the opportunity of openly investigating his evidence in the face of his country is lost; his written examination speaks for him from his grave, and those against whom he informed are affected by the full weight of all that he has sworn, unexplained, unqualified, and unimpeached. If his character could have been made questionable by involving him in contradiction and inconsistencies; if there were any thing in his manner which might

render his credit doubtful; if he were such a witness as could not bear the torture of cross-examination in a public Court of Justice; if he had originally given false informations in any respect, and might be disposed upon the trial to retract them,—all those advantages and chances are lost and taken away by the very persons who conceived that in destroying him they destroyed his testimony. The prosecution is facilitated, and the defence is impeded by the very crime which was perpetrated in the hopes of defeating justice; and the law by this severe but necessary provision, applicable only to seasons of public disturbance, asserts itself against the greatest offence that can be committed in furtherance of those confederacies, which in every step of their progress, it was the object of the legislature to encounter and defeat.

I have now stated to you the principal facts of this extraordinary and tragical case, and made upon the nature of the offence the observations which it suggests. It remains for you to consider and to weigh the evidence; you will find it, as I told you, merely circumstantial. If it shall appear to you insufficient to ascertain the guilt of the prisoners, or any of them, or if a rational doubt can be excited in your minds of their guilt, it is the anxious wish of those who conduct this prosecution, that the unfortunate persons now upon trial may have the full benefit of such opinion, or such doubt: but if on the contrary, you are satisfied in your consciences of the guilt of those men; you will not, I trust, and am convinced, be deterred from the discharge of your awful duty, by any temporizing spirit or unworthy panic; you will remember, that the blood of a murdered man calls for vengeance, and that public justice calls for example.

*John Ormsby, esq. sworn.—Examined by
Mr. Attorney General.*

Are you a magistrate of this county?—I am, sir.

Where do you reside?—At Gortnarabbey, near Crossmolina.

Mention generally, whether you know any thing of the existence and progress of the association which has been formed in the country under the denomination of “Threshers?”—I know the whole county is, and has been for some time past, infested with considerable disturbances by a number of persons styling themselves “Threshers.”

What is the nature of the outrages committed by them?—Of all kinds, such as swearing persons, taking up arms, destroying corn, dressing themselves in white shirts, and sometimes with straw, assembling in great numbers, breaking open houses, and other atrocities.

Did you know Thady Lavin?—I did.

Did he at any time and when swear informations before you respecting any of the persons concerned in these outrages?—He did.

At what time?—On the 13th of September last.

Is that the information he swore before you? [handing a paper to the witness].—It is.

Did he come voluntarily before you, or had any charge been made against him?—There was no charge of any kind made against him; he came voluntarily to me at colonel Jackson's house, while I was at dinner; he there first mentioned the matter to me, and not having an opportunity to inquire particularly, the house being full, I appointed the next day to meet me: he met me the next day in the house of the permanent sergeant of yeomanry in Crossmolina, and he gave me this information, to which he swore.

Did you hold out to him any prospect of reward or threat of punishment?—I did not. On the contrary, I told him he had no reward to expect: he said, he knew it right well: he was an intelligent man.

After he swore the informations, were any of the persons sworn against apprehended?—A good many.

Were they arrested immediately?—They were.

Was it known in the country, that this man had sworn informations, or was there any suspicion of it?—I endeavoured to keep it secret; but by his coming to me frequently and meeting me often in the village, the matter became known; and then he avowed publicly, that he was the person, who gave the information.

After it was publicly known and avowed, that he was the person, was it considered safe to leave him at large?—I considered it very unsafe to leave him at large, and I received directions from government to take particular care of him, and I proposed to send him to Castlebar, where he could be taken care of in the prison, under a military guard. He objected to that, and said, that as he came voluntarily forward to serve the country, he would not be subject to the disgrace of confinement.

He appeared to have been concerned in the outrages, of which he gave information?—He told me so.

While you remained in the neighbourhood of Crossmolina, did he continue under any protection?—He did; he was under the protection of the permanent sergeant of the Crossmolina corps, a most active, zealous, and loyal man, in whose house Lavin lived.

Were you under the necessity of leaving the neighbourhood of Crossmolina?—I was obliged to go to Ballinrobe on the 16th of November, the Sunday previous to the election.

How soon after your leaving home, was the attack made upon Lavin?—I was in Ballinrobe; there I first heard it, either that day, or the very next; I am not quite sure.

When you left home, Lavin was quite safe?—He was; and as I passed through the village, on my way to Ballinrobe, I gave him strongly in charge to the permanent serjeant.

John Ormsby, esq. cross-examined by
Mr. T. Moore.

Did Lavin give information against any who are not now upon trial?—He did against several.

Are those persons in their habitations?—You know more of that than I do; if they were at their homes, I should have them, and make them make their appearance here.

Mr. Attorney General.—Look at the information, and see whether any of the persons I shall name were charged by Lavin. Is John Flynn included?—He is; John Flynn of Tureen.

Is Edmund Durneen included?—There are two persons of the name of Durneen included; one is called Big Durneen of Cloonaragh, or Goetduff.

Is Michael Flynn of Tureen included?—He is.

Mention what persons you committed to prison, in consequence of Lavin's information?—I committed Thomas and Michael Reap, Patrick M'Eniry, Patrick Herbert, Wm. Gillespie, Thomas Moghady, Patrick Haggarty, and others.

Was John Flynn one of the persons sworn against?—He was.

Can you mention the names of any others?—John O'Boyle, Charles Doozey, Patrick O'Boyle, James Merrick, and Edmond Loughname.

What was the nature, in general, of the offences charged against them? were they connected with the *threshing* system?—They were: they were charged with taking up arms, breaking open houses, swearing people, and such like.

Cross-examination resumed.

Mr. T. Moore.—Against how many others did Lavin give information.—Five or six others.

Did they abscond?—They did, or I should have arrested them.

George Moystyn sworn.—Examined by
Mr. Solicitor General.

You are permanent serjeant of the Crossmolina corps?—I am.

Do you remember Lavin being put under your care?—I do.

At what time?—Shortly after the 13th of September last.

How long did you keep him?—He stopped with me till the 14th of November.

How did he get out of your hands?—He used to go back and forward to his place at Tureen, a mile and a quarter from Crossmolina.

Was that in the day-time?—It was.

When did you last see him alive?—On Friday, the 14th of November.

Did you see him after his death?—I did.

When?—I got an account of his death at eight o'clock on the morning of the 17th of November.

Did you go to look for him?—I went immediately, but he had been carried from the place where he was murdered to his own house.

What appearance had his body?—At the time I saw him, he was laid out without a shirt, with only a sheet thrown over him: he had six or seven stabs in his breast, and upon turning him, I saw upwards of thirty wounds: he had two cuts of a hatchet, or such a weapon, on the back part of his head, and another cut near one of his eyes, which appeared like the cut of a hatchet.

Did you see his wife at that time?—I did: he was laid out at one side of the fire-place, and she was lying in a bed at the other.

Had she any marks of violence?—She had; one side of her temple was bruised, as if with the back of a hatchet: she had a cut on her head, and a stab in one of her arms, as if an attempt had been made to stab her, and she had stopped it with her arm: it came against the bone: the back of her hand was cut, as if with a hatchet, and on the next day, I saw nine or ten large black spots, like bruises, from the poll of her neck to the small of her back.

Do you know Coll Flynn?—I do.

And John Flynn?—I do.

What relation is John Flynn to Coll Flynn?—He is the son of Charles Flynn, who is cousin to Coll Flynn.

Do you know Michael Flynn, against whom Lavin swore?—I do.

What relation is he to Coll Flynn?—I do not know exactly; but he is the son of Laurence Flynn, who, I believe, is cousin to Coll Flynn.

At whose house the murder was committed?—Yes.

Do you know Charles Flynn?—Yes.

Do you know where Michael Flynn is?—I do not.

What relation is Charles Flynn to Coll Flynn, or Laurence Flynn?—He is brother to Laurence, and cousin to Coll Flynn.

Do you know Edward Durneen, who was sworn against by Lavin?—I know one of the Durneens,

Do you know Durneen, who is now in the dock?—I do.

Is he a relation of the men sworn against?—He is father of one of the Durneens, and uncle of the other, who were both sworn against.

[The witness identified Coll Flynn, Laurence Flynn, John Flynn, Charles Flynn, and Edward Durneen; the last man being in the dock, though not upon trial.]

George Moystyn cross-examined by
Mr. T. Moore.

You say that Lavin was absent from the 14th to the 17th?—He was.

Did any of the persons against whom he gave informations abscond?—A good many.

A Juror.—Did Lavin sleep in your house on Saturday the 15th?—No, he did not; he was absent from the 14th.

Margaret Lavin sworn.—Examined by
Mr. Attorney General.

[This witness not speaking the English language, an interpreter was sworn to explain her testimony.]

Were you married?—Yes.

What was the name of your husband?—Thady Lavin.

Is he living or dead?—I am sorry he is dead.

Do you recollect having been at Crossmolina with him?—I do very well.

Did you go with him at any time from Crossmolina to Tureen?—I did.

At what time?—On Sunday.

Was that the Sunday of his death?—It was.

Were you at Tureen on the Saturday before?—I was; it was there I lived.

Do you recollect going with your husband on that Sunday to attend a funeral?—I do very well.

Do you know Coll Flynn?—I do.

Did you meet him at that funeral?—I did.

Was it after the funeral?—He was at the funeral, and in company with him.

Do you mean in company with your husband?—I do.

Turn about and see if Coll Flynn be in court?—This is he.

[Here the witness identified all the prisoners.]

Had your husband any conversation with Edmund Durneen after the funeral?—He had.

What did he say to him?—My husband was selling corn and sheep to Coll Flynn.

What reason had your husband for disposing of them?—As he wanted to come in to live in the town of Crossmolina.

Why did he want to live there?—He was afraid of remaining in the place he was in.

Was there any talk of drinking?—There was.

What was it?—They went to drink half a pint of whiskey.

Who proposed that they should drink the whiskey?—I do not know, not being up with them at the time; but Coll Flynn having got the bargain was to give the whiskey.

Were you willing to go with them?—I was not.

Why not?—I was uneasy for him and my children.

Where was it that the whiskey was to be drank?—In Laurence Flynn's house.

Was there any place on the road where it was proposed to stop at first to drink a naggin of whiskey?—There was.

Where?—At the house of Oliver Roe.

Did they get the naggin there?—They did not.

Why?---It was not in it.

Did the people at Oliver Roe's tell them of any other place to go for whiskey?---They did not.

Then they went from Roe's to the house of Laurence Flynn?---They did.

Were you satisfied to go there?---I was not.

Why not?---I was out all the day and wished to go home.

Had you any apprehensions about your husband?---I had.

Upon what account?---For fear the *Threshers* would kill him.

Why did you think they were likely to attack him?---Because he informed against them.

Do you know whether he had given information against the prisoner John Flynn?---He did not give information against him that I know of.

What relation is John Flynn to Coll Flynn?---They are brother's children.

What relation is Laurence Flynn to them?---The same relationship.

When you went into the house of Laurence Flynn, did you find Charles Flynn there?---I did.

Was Laurence Flynn there?---He was.

Was James Laydon there?---He was.

Was Patrick Barrett there?---He was.

Was John Flynn there?---He was.

Was Edmund Durneen there?---He was.

What were they doing?---They were drinking.

Court.---What time of the day was this?---An hour before night.

Mr. Attorney General.---Are there two John Flynn's?---There are; John Flynn here is the son of Charles Flynn; the other John Flynn is the son of Laurence.

Had your husband sworn any information against John Flynn, the son of Laurence?---He had, as I heard.

Did your husband continue any time in the house?---He was a good while there.

Court.---How far is Laurence Flynn's house from Tureen?---Two or three acres.

Mr. Attorney General.---Did you express any uneasiness at your husband's continuing there?---I thought it too long he was remaining there.

Did you signify it to him in any way?---I was shaking my head at him, and making signs to him to come away.

Did you mention any reason for your wishing to get away?---I gave as a reason that I was uneasy about the children, and wished to be going towards home.

Did any person say or do any thing to prevent you going towards your husband?---I got up to get away, and Coll Flynn and Charles Flynn took hold of me to prevent me.

In what manner did they prevent you, and what did they say to you?---They said, "Stay, my dear, it will not be long till you have him to go home."

Did they put their arms about you?---They did.

How?---One upon one side, and one upon the other.

Did they put their arms round your waist?---No; but each of them got my arm under theirs.

Were you sitting down or standing at that time?---I was standing.

Did they say any thing about the children?---They said they would send a little girl home to take care of the children.

What children had you at that time?---Four female children.

Was any person sent for to come to the house of Laurence Flynn?---Edmund Durneen sent for Daniel Regan and Thomas Horan.

Whom did he send for them?---I do not know what particular person was sent for them.

How do you know they sent for those persons?---Because I heard they were sent for.

Did you hear that at the time in the house?---I did.

Did Regan and Horan come?---They did.

How soon after they were sent for?---In half an hour.

Did they join the party in drinking?---They did.

Did any one speak to them, when they came in?---Every one there spoke to them.

Did they speak loud or in whispering?---They spoke loud.

Did John Callaghan and Daniel Callaghan come into the house at any time?---They did.

How soon after Regan and Horan came in, did the Callaghans come in?---A good while after.

Were they sent for?---I do not know.

Is Laurence Flynn's a public house?---It is not.

After these persons came in, did any of the party go away?---There did.

Which of them went away?---John Flynn, James Laydon, Patrick Barrett, and John Callaghan.

How soon after John Callaghan first came in, did he go out?---It was a good time.

Did these four persons go off altogether?---They did not.

Which of them went away first?---John Flynn and James Laydon first went out.

Did they go together?---They did.

Did they return?---They did not.

Did Patrick Barrett and John Callaghan go out together?---They did.

Did they return?---They did.

Did they return together?---They did; they came back together in company.

How long were they away?---About an hour.

Did any one mention for what purpose they were going out?---They went to fish.

Who said that?---Patrick Barrett and John Callaghan.

Did any persons rush into the house at any time after?---There did.

How many?—About five, or six.

How soon was that after the return of Barrett and Callaghan?—It was not an hour.

Were those persons who rushed in disguised in any manner, or had they any particular dress upon them?—The first man that came in was covered with straw, and the others had white clothing.

What did your husband do, upon seeing this party come in?—He rose from the bed, where he was sitting, and ran to the upper room.*

What did they do upon this?—The man dressed in straw struck him with the hatchet.

Was it with the edge of it?—Yes.

Where did he strike your husband?—Upon the head.

Did it split his head?—Not completely.

Did the rest do any thing?—They did.

What?—One of them put a spear into his back, and it came out of his breast.

Did you do any thing to save your husband?—I did.

What?—I took hold of the man, who had the hatchet, by the hair.

Was that at the time he was striking your husband?—It was when he was making the second blow.

Who was that man?—Edward Durneen.

Is he any relation to the man, who is now in the dock?—They say, the man here is uncle to the man who was dressed in straw.

Did any of the persons, who were there, do any thing to save your husband?—They did not.

Juror.—Were they drunk, so that they could not interfere?—They were not.

Mr. Attorney General.—When you raised your arm to help your husband, did they attack you?—They struck me upon the forehead with the hatchet.

Who did that?—The man who had it, Edward Durneen.

Did you receive any other abuse?—I did.

What?—A prod of a bayonet in the arm, and a cut upon my finger.

Did you receive any injury upon your back or side?—They gave me a prod in the side.

When you were receiving these injuries, did Coll Flynn and Charles Flynn put their arms round you, so as to endeavour to save you?—They did not before I was struck with the hatchet; but when I got that stroke I fell, and cannot tell what happened afterwards.

But before that blow, did any of the men, who were drinking there interfere, or do any act to save you or your husband?—They did not.

Did any of those men interfere, or make any attempt to take the persons who committed the murder?—They did not.

* By upper room is meant an inner room upon the same floor, more remote from the outer door, than that in which the company were sitting.

Did any of them call out for help, or call upon the neighbourhood?—They did not call for any help.

After the body of your husband was carried home, did any persons call upon you to condole with you?—Yes: James Laydon and John Flynn.

When was that?—After he was laid out.

Was the body brought home the same night?—It was.

A Juror.—What were the men in the house doing during the time of the attack; did they move at all?—I did not see one of them stir.

Did you know any others of the men who came in besides Durneen?—I did; John Connor.

Margaret Lavin cross-examined by
Mr. T. Moore.

Did you hear, that it is usual in that part of the country to buy malt, and convert it into whiskey?—It is.

How did it happen, that Laurence Flynn had this whiskey?—Some malt he had himself.

What did he do with it?—He made whiskey.

How long had you been residing in the house before this?—He did not go home at all to sleep.

Where did you pass the four nights you were absent from Crossmolina?—I was at Tureen.

Where was your husband?—In the house of Mr. Bray.

Where is that?—In Rahinimore.

You said, you wished to return home to your children, instead of drinking at Laurence Flynn's?—I did.

The conversation was loud?—It was.

And the persons who went out said they went to fish?—They did.

How far off was the river?—A little below the house.

Did you see any fish that night?—I did.

Did they bring any in?—They did.

A Juror.—How much?—Two or three trouts.

Mr. T. Moore.—Did you eat part of them?—I did not.

Were they preparing any supper?—They were.

Do you believe the fish were taken by the persons who went out?—I believe they were.

A Juror.—How soon after they went out to fish, did they return?—In about an hour.

Mr. T. Moore.—The two persons, who went out to fish did not go out, or return with the others?—They did not.

Patrick Barrett and John Callaghan went to fish: had they any company with them?—They had: the women went with them.

Who were they?—The wife of Coll Flynn and his daughter, and his brother's daughter.

What are the names of his daughter and his niece?—Polly Flynn and Winny Healy.

How many were in the house at the time

the *Threshers* came in?—They were all there, except two.

Then there were fourteen or fifteen persons?—There were.

In what manner did the *Threshers* come in? did they push in the door?—They came in one instant.

How soon did they make the attack upon your husband?—Instantly; they made no delay.

Was any violence offered to any other person in the house?—The man with the hatchet drove the woman of the house back.

How long did you remain there?—Till I came to myself.

How long was that?—I cannot tell.

Who was in the house when you recovered?—The man of the house, and Charles Flynn, and his wife and son.

In what state did you find yourself, and where were you, when you recovered?—I was bleeding on the floor.

Was any of the five men there?—I did not see them.

Did the people of the house see you recover?—They did.

What did they do after that?—When I came to myself, I went out, and saw my husband stretched abroad.

Was he dragged out of the house after being killed?—I do not know.

A Juror.—Who were in the house, when you recovered?—Laurence Flynn, Charles Flynn, and William Flynn, the son of Laurence.

Mr. T. Moore.—Did you speak to Coll Flynn?—I did.

Did you desire him to go to any place?—I desired him to go and try where they had left Thady.

Did you desire him to go to any of the neighbours, and tell them of the event?—I desired Laurence Flynn's wife to go to the neighbours.

Were the neighbours told of it?—They were.

Did any of the prisoners abscond after this?—They did not.

A Juror.—Did any of the persons who remained give you any assistance in tying up your wounds?—They gave me help to carry him home.

But did they assist you in dressing your wounds?—I did not think worse of my wounds at that time.

Did they show any disposition to assist you?—I cannot say.

What do you believe?—I believe they had.

Why did not they help your husband, when the people were murdering him?—I cannot say.

Did not those people rush in suddenly?—They did.

Did you see what became of the man of the house? Did he run off?—He was taking care of his wife, who was in a fainting fit on the bed.

What time was this?—When I recovered.

But what did Laurence Flynn do, when the party rushed in?—I do not know.

How soon after were these persons taken up?—The next day.

They did not go off that night?—They did not.

Mr. Attorney General.—When you recovered, you found yourself lying on the floor, bleeding.—I did.

Your husband's body had been dragged outside?—It was.

Had any step been taken in the mean time to call the neighbours, or assist you?—There was not.

Are there any houses near Laurence Flynn's?—There are three houses.

Did Edmund Durneen express any fear when his nephew came in?—He was not there that time, he went out.

Then Edmund Durneen had gone out of the house before his nephew came in?—He had, Bridget Maurick came for him.

How long before the nephew came in?—A good while.

Who was Bridget Maurick?—The wife of Daniel Regan.

Had she any brother?—I do not know.

Do you know in what parish Callaghan and Barrett live?—In Moygowan.

Is that a different parish from that in which Laurence Flynn lives?—It is.

Was there any door in the room to which your husband ran, and in which he was murdered?—There was the door of the room.

Was there any outer door into the street?—Not from that room.

A Juror.—How far is Callaghan's and Barrett's house from Laurence Flynn's?—I do not know, for I was never there.

But they are in different parishes?—They are.

Court.—Were there any women in the house at the time the murder was committed?—No one, but the women of the house.

How long before the murder was committed did the other women leave the house?—A good while, near two hours.

Henry Moran sworn.—Examined by Mr. Solicitor General.

You are gaoler of Castlebar?—Yes, sir.

Have you any persons in custody charged upon the information of Lavin?—I have.

How long have they been in your custody?—They were committed upon the 18th of September.

Was any attempt made by them to break the gaol about the 10th of November?—There was; they bribed one of the centries; I got information from the turnkey, and I spoke to the centry and desired him to go on with it, and I kept watch; they were to give him ten guineas. When the centry received the purse, he said, he would try if the other

centries were asleep, and instead of doing so, he came into the kitchen and opened the purse, and they were prevented. There was silver and halfpence in the purse to make it feel heavy.

Henry Moran cross-examined by Mr. *T. Moore*.

None of the prisoners now upon trial were there?—No.

[Case closed on the part of the Crown.]

DEFENCE.

Mary Flynn sworn.—Examined by Mr. *T. Moore*.

Do you recollect the night of this unfortunate murder?—I do, it was Sunday night.

Were you drinking that night any where?—I was.

Where?—At the house of Laurence Flynn.

Did you leave the house that night with any person?—I did.

With whom?—With John Flynn and James Laydon.

Was that before or after the murder?—We left him safe and sound, drinking with the rest.

Where did you go to?—To Charles Flynn's house.

What became of James Laydon and John Flynn?—They went to bed, and I and a little girl there did not go to bed.

How long after did you hear of the murder?—I cannot give a particular account, but it was about two hours after we left the company.

Can you take upon you to say, that during that time, John Flynn, and James Laydon did not go out?—They did not.

Did you part company with them from the time of leaving Laurence Flynn's house till the time of the murder?—Not till we heard the hue and cry of the murder.

Who told you of it?—It was a universal cry.

Mary Flynn cross-examined by Mr. *Attorney General*.

To whose house did you go with John Flynn and James Laydon?—To Charles Flynn's house.

Who was there at that time?—Nobody but the children, for they were all at the drinking.

What other woman was along with you?—Polly Flynn.

What relation is she to John?—Uncle's daughter.

Who is her father?—Charles Flynn.

Do you mean Charles Flynn, who is now upon trial?—Yes.

What relation are you to her?—Her uncle's daughter.

Who is your father?—John Flynn.

Is he here?—No.

Did James Laydon and John Flynn eat any

thing at the house of Charles Flynn, when they went there that evening?—They did eat something before they went to bed.

What did they eat?—Potatoes and milk.

Have you any reason to recollect particularly the time they eat their supper, or were you desired to take notice of it?—Nobody desired me to remark it.

How far is Charles Flynn's house from Laurence Flynn's?—About two or three acres.

Why did John Flynn go to bed in Charles Flynn's house?—He is the son of Charles Flynn and lived there.

Where does James Laydon live?—About a mile and a half from Charles Flynn's.

Is it more than half a mile?—It is about a mile and a half.

Did you ever know Laydon to sleep there before?—He did.

Did he often sleep there?—When he used to come the road.

Did you know Lavin?—I had no knowledge of him, but saw him once or twice, as I lived in Tireragh.

Were you not much vexed at hearing of his death?—I was unhappy, as every one else was.

Was not Charles Flynn much grieved?—He was, as every one else was.

Did you hear him say any thing of the person who did it?—He did not, nor did he know any of them.

What time did Charles Flynn come home that night?—He did not come home till after the people came in and murdered the man in their presence.

Did he come home until after you heard of the murder?—He did not.

Did Charles Flynn say where he had been from the time the murder was committed, until he came home?—He did not leave the house from the time the murder was committed till he came to his own.

What account do you give of Charles Flynn from the time the murder was committed, until he came home?—I can give no account, only he came in after the hue and cry.

Did he give any account of the murder?—He was crying as hard as if it was his brother.

Did he tell John Flynn and James Laydon?—He sent them out of their beds and they began to cry.

How long did they cry?—About half an hour.

Were you crying with them?—I was crying with them, and every one must pity him.

Did you not consider him a worthy man?—We were all fond of him, as an honest man.

Were they not fond of him, as an honest man for swearing against the Threshers?—We could say nothing to him, as he did nothing to us.

When you recovered from your crying, you set about discovering the murderers?—We

went to assist in stretching him on some boards.

But when did they look after the murderers?—I do not know when they looked after the murderers: we went to the man.

Did Charles Flynn mention to John Flynn how he escaped from the murderers?—They gave him a blow on the head, as he told.

With what was he struck?—I do not know.

Did he not say, he had a narrow escape from the villains?—He did, and he thought he never would escape.

Did they suspect Charles Flynn of swearing against John Flynn and Michael Flynn.

[The witness would not answer this question.]

What made them so angry with Charles Flynn?—Only because he happened to have the misfortune to be in the way.

Do you know Edmund Durneen?—I have no knowledge of the people of the country, being only passing there that time.

Do you know big Durneen?—I do not.

Do you know who came in with the message for Durneen?—I cannot tell that, for I was not there at that time.

[Defence closed.]

Mr. Ormsby was again examined on the part of the Crown.

Was John Connor, the man mentioned by Margaret Lavin, sworn against by her husband?—He was.

SUMMING UP.

Mr. Baron *George*.—Gentlemen of the Jury; In this case, there are ten prisoners upon their trial, all the persons who are included in this indictment, except Edmund Durneen, who having been apprehended but yesterday, and saying he was not ready for trial, but would be ready to-morrow, I thought it right to give him time till to-morrow, before he was put upon his trial for his life.

Gentlemen, the prisoners are indicted for a conspiracy to murder; by our act of the 36th Geo. 3rd, chap. 27th, all persons who shall by due course of law be convicted of conspiring, confederating, and agreeing to murder any person, shall be adjudged felons, and shall suffer death as felons without benefit of clergy; and this crime may be complete, even though the conspirators should be disappointed in their purpose, either by the providence of God, or the exertions of man.

Gentlemen, when the crime of murder is committed by several persons upon preconcert and deliberation, a conspiracy precedes the commission of the black deed itself. As in this case, a murder was committed by several persons, the first question which now presents itself to your inquiry is, whether that murder was preceded by a conspiracy or not, and if it was so preceded, then, whether the men, now on their trial, or any, and which of them

were of that conspiracy. It is necessary, that you should know, that the crime of conspiring to murder a man can seldom be expected to be proved by direct and positive evidence, unless testimony be given by a fellow conspirator. All such offences are in their nature dark and secret. It is to be expected that caution will generally be used, lest it should be observed or discovered by the victim of that conspiracy himself, or by those who might inquire into the circumstances after his death. But when all the conspirators stand fast to each other, there the proof of the crime is left to evidence of the sort which now appears before you; and gentlemen, it is right to inform you, that the circumstances which have been given in evidence (for it is only circumstantial evidence) are to be deliberately weighed and considered, and if they amount only to a light, or to a probable presumption that the prisoners are guilty, you will take care in such case, to make no mistake, but acquit them. But if all the circumstances, taken together, are such as to convince honest and conscientious men, and do amount to a violent presumption, that is considered as equal to positive evidence, and as little likely to deceive or mislead. Therefore, gentlemen, before I state the evidence to you, I premise these few observations, that you may apply them to that evidence as I go along, and determine, whether the facts, which have been disclosed, satisfy you, that the prisoners, or any, and which of them, acted in concert with the persons who committed the foul deed—whether the prisoners, or any of them, had any previous communication concerning it, with the persons who came prepared to perpetrate it.

It appears, that the men who committed the fact came in disguise to avoid prosecution. Material considerations arise from the place in which the murder was committed, and from the persons sworn to be the actors in it. The evidence laid before you is intended as proof, that some of the prisoners drew the unhappy man to the fatal spot, with intent to have him thus murdered; that they knew, that would take place which afterwards did take place; that they were acquainted with the design, that they sat there delaying the man, till the persons should come to dispatch him; that they gave him no notice of the danger that was preparing for him, but concealed from him the knowledge of the design; that the fact, being no matter of suspicion to them, they took no part to save the wretched man, or to discover of, or apprehend the persons who committed the fact. But whether the evidence you have heard has shown that such was the case or not, or has left the matter doubtful, is for your serious consideration.

Gentlemen, with these observations, I will proceed to state the evidence to you. [Here the learned judge read the evidence minutely from his notes, and made occasional remarks.] That the charge stated by Lavin was not

lightly made against the persons now in gaol under his information, appears from the attempt of the prisoners, against whom he informed, to break gaol; they rather wished to escape than venture to stand their trials; and being disappointed in that attempt, it was natural, that the friends and relations of those persons should be alarmed for their safety. [After concluding the summing up the evidence, the learned judge proceeded]: Gentlemen, upon this evidence, you are to consider, whether the prisoners, or any of them, conspired, and acted in concert with the persons who committed the murder, or not. It is evident, the perpetrators of the crime had notice, that this unfortunate man was in the house of Laurence Flynn. They appear to have prepared and disguised themselves to commit this crime; and if they did so in concert with any of the people in the house, the persons who held such communications are guilty. In deliberating upon that question, you will consider the circumstances and put them together. It appears that Lavin had charged John Flynn, Edward Durneen, John Connor, and others: it appears that Coll Flynn, one of the prisoners, is the near relation of John Flynn, so accused, and it is no violence to presume that enmity was entertained in the breast of Coll Flynn, against Lavin. Coll Flynn commenced a treaty for the purchase of some corn and sheep, and part of the bargain was, to go and drink with a man who bore no small enmity to him; where is he brought? to the house of Laurence Flynn, according to one of the witnesses, the father of a person against whom Lavin had sworn; here Edmund Durneen the elder, against whose son and whose nephew Lavin had given information, sends out for Ryan and Horan who came in half an hour, and this Edmund Durneen appears to be the uncle of Edward Durneen, who soon after rushed into the house, armed with the hatchet. Thus he was surrounded by a number of persons, who, it would be fair to consider, bore no small hostility to him, and it appears, that by those persons he was caressed; and when his wife, apprehensive of the danger that hung over him, expressed a wish to go away, two men, who, one would think, would rather have wished her out of the house, take her each by the arm, and in order to persuade her to stay, use endearing expressions, and propose to send a girl to take care of the children, for whom, consistently with the situation in which they stood, they could have had no more regard than for their father. In this manner, those unfortunate people were delayed: some time elapses before the tragedy is acted; some women, who were of the party, were brought away from the place which was to be the scene of the transaction: Edmund Durneen, the father of one of the persons charged by Lavin withdraws outside the door, and is not present at the murder: and John Flynn, who was one of the persons in com-

pany, and James Laydon go to the house of Charles Flynn, and there they remain until they were afterwards roused in consequence of the fact. Upon the evidence in this case, there seems to be little doubt, that this murder was committed in revenge for the information Lavin had sworn, and to prevent his giving evidence against the persons he had accused. You are to consider, under these circumstances, what countenance and what reception he had a right to expect from this company, into which he had got and by which he was surrounded, if they had expressed or disclosed to him the genuine feelings of their hearts towards him. It is for you then to consider, whether the kindness or hospitality shown him was dissembled, or whether it was sincere, and if you are persuaded it was dissembled, then consider why it was so, and what purpose was such insincerity intended to answer.

Now, gentlemen, this transaction appears to have taken place in a house where a number of persons were drinking whiskey, and where private whiskey was distilled against law: an illicit dealing of this sort ought not to prejudice the persons on this trial; and I mention this circumstance to apprize you, that private distillation is apt to draw together various persons, who may be strangers to the objects and pursuits of each other, and thus men may be present at a conspiracy of this nature, to whom the secret may not be disclosed, and to whom it may not be necessary to disclose it. As to this, you are to consider the evidence with regard to Patrick Barrett and John Callaghan, who went out before the murder, saying they were going to fish; and they did go to fish; a circumstance favourable to them, from which it may be believed they knew nothing of the transaction; for if they did, they would scarcely be in a temper of mind to go to fish; that circumstance is therefore submitted to your judgment. And, gentlemen, you will also consider the other persons, against whom no other facts have been disclosed, nor any family connection stated, and whether it is not just and right to distinguish their case from the others. I do not intimate to you any opinion whatever which I may entertain as to the guilt or innocence of any of the prisoners at the bar. It is not my province. The whole case depends upon circumstantial evidence, and you will consider, whether the prisoners, or any of them appear to have acted in concert with the men who committed the crime. The facts disclosed seem to show, that the principals in the first degree had accomplices, and you will judge whether any of the prisoners was so concerned. If you shall be of that opinion, you will find such of them guilty. But if you have such reasonable doubt as honest men can with safe consciences entertain, you should acquit them. For you must be convinced, that the object of this prosecution is to bring guilty men to justice, and not to make the sanction

of the law light upon the head of those upon whom it ought not to light. I trust that this case is in the hands of men of humanity, knowing their duty to the prisoners and to the public; and therefore, you will fairly weigh the transaction. You see, the kind of evidence adduced is circumstantial evidence; but circumstances clearly and satisfactorily proved, and well connected, may as fully prove a fact, as direct evidence can do: you will decide, whether the evidence in this case has such an effect upon your minds.

The Jury retired for three quarters of an hour, when they returned the following verdict.

Coll Flynn,	Guilty.
Laurence Flynn,	Guilty.
Charles Flynn,	Guilty.
Patrick Barrett,	Not Guilty.
James Laydon,	Not Guilty.
Thomas Horan,	Guilty.
Daniel Regan,	Guilty.
John Callaghan,	Not Guilty.
Daniel Callaghan,	Guilty.
John Flynn,	Not Guilty.

Thursday, December 11th, 1806.

PATRICK RATIGAN and DOMINIC CONNOR were indicted for rising and appearing armed and assembled, with many others, to the terror of his majesty's subjects, on the 25th of November, in the forty-seventh year of the reign.

The prisoners pleaded Not Guilty, and a jury being sworn,

William Brooks was sworn and examined by Mr. Attorney General.

Do you belong to any corps of yeomanry?—Yes.

To what corps?—The Ballina corps.

Were you on duty upon the 25th of last month?—I was.

Who was on duty with you?—John Ormsby, Jasper Burke, and others.

Do you recollect getting information of any noise from any person, and from whom?—One of the guard was out and heard the noise of dogs; he said, there were Threshers there, as he believed; I sent him to listen; he said, to the best of his opinion, the Threshers were out; we went forward, five or six men. We heard the shouts of people; we went further and heard dogs barking; we lay in ambush, expecting them down a hill, but hearing a shot, we advanced further, and surrounded the place where we thought the people were. Two men advanced and we desired them to stop, but they did not, and we fired upon them.

Court.—What time of the night was this?—It was after night a good while.

Mr. Attorney General.—What happened then?—They ran, and we met a man who called himself Patrick Flynn.

Where?—In the same field with the two men; I got hold of him and left him with the guard, and pursued the rest, but did not overtake them. We got a number of straw bands in the field, and I put one of them upon Flynn's head; he said, he would not wish, for half a guinea, to have it on his head.

Was there any corn thrashed in the neighbourhood that night?—There was in the same village; it was quite fresh, and was thrown all about.

Patrick Flynn sworn, and examined by Mr. Solicitor General.

This witness contradicted his written information, and was committed for perjury.*

The prisoners were acquitted.

PATRICK HARGEDAN was indicted for that he, on the 21st of November, in the forty-seventh of the king, at Foxfort, in the county of Mayo, feloniously supplied arms, to wit, one gun, to persons unknown, to assist them in committing offences against the statute, 27 Geo. 3, that is to say, inflicting punishments and destroying the property of liege subjects, in order to compel them to assist and enter into unlawful combination and confederacy, under the denomination of *Threshers*, for the disturbance of the public peace, against peace and statute.

The prisoner pleaded Not Guilty.

JURY SWORN.

Thomas Elwood,	Thomas Heron,
Peter Lynch,	William Ferris,
Ralph Brent,	Robert Flynn,
Thomas Rutlege,	Francis Wright,
George Gildea,	Richard Leviston,
Robert Betagh,	Edward Malley.

Mr. Attorney General.—Gentlemen of the Jury; I shall feel it necessary to say a few words in explanation of the grounds upon which this charge is brought forward, and those principles of law and the evidence to which it will be proper, that your attention should be directed.

Gentlemen, the substance of the accusation against the prisoner is this:—that he has supplied a body of persons, assembled under the denomination of *Threshers*, with arms. This is a capital offence by the law of the country: the particular act upon which the indictment is founded is the 27 Geo. 3, c. 15, by which it is enacted, that every person knowingly and voluntarily supplying horses, arms, and ammunition to others for the purpose of carrying into execution any of the offences in that statute mentioned, shall be adjudged guilty of felony without benefit of clergy. This act of parliament has specified various crimes, and among them that of supplying arms for the purposes mentioned in

* Vide p. 144.

the act. Accordingly the indictment here states, that the prisoner supplied arms to persons associated to destroy the property of the subject. And therefore the law is clear: if it shall appear, that persons are so associated and that arms were supplied to them by the prisoner, he becomes a proper object of the provisions of this act of parliament.

Gentlemen, it will be highly satisfactory to me, and to those who are concerned with me in these prosecutions, to find that the claims of justice shall require no new sacrifice, and that the painful task of calling down punishment upon the guilty shall terminate. But it is of importance to the peace of the county, that it should be seen and felt by the deluded beings who have engaged in this conspiracy, that it is not merely the man who inflicts a mortal wound and thereby commits a murder who involves himself in punishment, but, as has been truly stated by my eloquent friend, the solicitor-general, every member of the conspiracy is tainted with the vice of the whole of it, and may be visited with the consequences of the crimes of others.

Gentlemen, it must strike you, that supplying arms to the persons engaged in this wickedness is an offence, not of a very inferior kind. The necessary consequence of co-operation is obvious, and at the same time that they are thus assisted, the loyal are disarmed.

Gentlemen, it will be clearly proved, that in the house of Robert Banks, in the town of Foxfort, a gun was deposited by Edward Hargedan, in order to prevent its falling into the hands of the banditti, who infested the neighbourhood. On the morning of the 22nd of November last, the prisoner came to the house of Banks and took away the gun; he carried it away, and declared that he took it for the purpose of giving it to the *Threshers*. It will further appear, that upon being apprehended and charged with the fact, he admitted, that he carried it away for that purpose, and left it in a place appointed, and where it was to be found by them. So that the fact is not controverted; but the defence, as I understand, is, that he acted under the impulse of terror and compulsion. The facts which he stated at the time, were, that a party of the *Threshers* came to his house the night before, and administered an oath to him, that he would procure this gun for them, and threatened his life, unless he did so, and that under the influence of this oath, he, on the following day took the gun. Whether this story of the oath, and the threat, and acting under the influence of fear be true, or not, it is not very necessary to examine; because that would be leading your minds from the subject of your present inquiry, and it would be fatal to the best interests of the country, if it were for a moment understood, that a defence of that kind, if established in point of fact, could be established in point of law. I state it, in the hearing of the learned judge, from whose

authority you will hear what the law is, that such a defence, if ever so clear in point of fact, is utterly deficient in point of law—and one of the objects of this inquiry is, to let those deluded men feel, that there is in the country a greater terror than that which operates upon their minds, that is, the law of the land. It is a principle of common sense—of all civilized countries—and of all law, that a man to be capable of committing a crime, must be a voluntary agent—his intention and his will must accompany the fact to make him criminal, and therefore if a poignard be put into the hand of a man, and he is compelled by the dread of immediate danger to his own life, to strike another, he is not guilty, because his will has not concurred with the fact. But the idea of compulsion and terror arising from *previous* threats compelling a man to do an unlawful act at a *future* day, is altogether inadmissible by the law of the country, and inconsistent with the clearest principles of reason. If this defence were admitted, there is no man, who could see the end or the consequences of it. If a man intended to commit a crime, he would no longer do it himself, and expose his life to the law; but he would go to another and threaten to take away his life, unless he, at a future day, committed the act, which is accordingly done in obedience of that command!—does it not revolt the mind to see, that by a circuitry of this kind, the worst crimes may be committed with impunity? You cannot draw the line between different offences: you cannot say, that if a man, under the influence of fear, administer an oath to another, he may defend himself, because he acted under fear; but if he committed a murder, he could not so defend himself—that if a man delivered a message to excite combination, he would be innocent—but that if he burned another man's house, he would be guilty. Gentlemen, it would shake the public safety to its very base, if this were tolerated for a moment.

The law admits this:—if a number of ruffians surround a man, threaten him with instant death, and continue force upon him, and he, under the terror of the loss of life acting and continuing upon him, commits a crime; the law and the constitution, in indulgence for the principle of self-preservation, which is the first law of nature, excuses him. But the same law says, in the same breath, that the moment the force discontinues—the moment he is rescued from the persons who so surrounded him and put his life in danger, that moment he becomes a free and accountable agent, and as such, he is subject to the rule and operation of law. And, therefore, where a number of persons unlawfully assemble and threaten a man, that they will do him mischief, unless he commits a particular crime at some future day, it is the bounden duty of that man to seek the protection of the law—to repair speedily to a magistrate—to give him information—to obtain his assist-

ance and support, and not by obedience to such threats—an unmanly submission to such commands—violate the law. If it were true, that a number of persons attacked the prisoner—if they kept him within their grasp—brought him to Banks's house, and while mortal weapons were in their hands, he, subdued by their physical force, took away this gun, God forbid he should be tried for it! The laws of God, of humanity, and of the land are the same—he would not be called to account. But if a banditti assemble under the darkness of night and cause a man to carry their designs into execution when the dawn of day appears, that man is accountable if he does so. If the law were otherwise, what would be the necessary consequence? That any band of conspirators associating themselves together would become more formidable than the law—they would encircle themselves with a terror, against which the terror of the laws could not operate; every man would yield to it, and wicked men would make it their pretence to abet and promote the designs of the conspirators.

Gentlemen, I have stated thus much, that you may understand the law upon the subject, and the defence, which it is suggested to me will be made. With these observations, I shall leave the case for your determination, under the control of the Court.

Robert Banks examined by *Mr. Solicitor General*.

Where do you live?—In Foxfort.

Do you know Edward Hargedan?—I do.

Did he leave a gun in your house?—No; but one Fox left a gun with me, which he said belonged to Edward Hargedan.

Where did you keep that gun?—Sometimes above stairs and sometimes below.

When did you miss it?—On the morning of the 21st of November last.

Do you know Patrick Hargedan?—I do; this is the man [pointing to the prisoner].

Did you see him at your house about the time the gun was missed?—I did.

At what time?—The same day.

At what hour?—Pretty early.

Was it before the gun was missed?—It was; he came into the house, and I asked him did he meet the men coming to work. He said, he did not; there was no other conversation.

Robert Banks cross-examined by *Mr. T. Moore*.

This gun belonged to Edward Hargedan?—It did.

He is a relation of the prisoner?—He is.

Can you form a belief, why Patrick Hargedan applied for it?—I cannot say; he did not apply to me for it.

Do you know the prisoner?—I do.

Do you suppose he was connected with the *Threshers*?—I do not believe he was; according as I can hear.

Mr. Solicitor General.—Have you any reason to know, whether he was, or not?—I have not.

Mary Roan sworn.—Examined by *Mr. Attorney General*.

Do you know Mr. Banks?—I do, sir.

Do you live with him?—I do.

Do you know Patrick Hargedan?—I do.

Did you see him at your master's house last November?—I did.

What did he do?—He did nothing, only take a gun; I went up stairs after him, and asked him, what he was going to do with it? He told me the *Threshers* swore him last night, and then he sat down upon the bed, and began to cry.

Did he say, what the *Threshers* swore him to, or what he was going to do with the gun?—He did not. When he began to cry, I asked him the reason; he said, they put him upon his knees three times to shoot him, and he said, he would break the gun, before he would give it. I desired him not to do it, as my master would not break it, and they would have his life, if they knew he broke it. He said, he had but one life, and was near losing it last night, when they had the rope round his neck.

Mary Roan cross-examined by *Mr. T. Moore*.

Is it not the practice of the *Threshers* to put persons in fear of their lives?—I have nothing more to say than what I have.

Robert Banks, Jun. sworn.—Examined by *Mr. Solicitor General*.

Where do you live?—In Foxfort.

In whose house?—Of Robert Banks, my father.

Do you know Patrick Hargedan? I do; this is he.

Do you recollect his coming to your father's house in November last?—Yes.

What did he do?—He went up, and the girl followed him, and he came down, cleaning his eyes, as if he had been crying.

Had he any thing in his hand?—A gun.

Did he take it away?—He did.

Did he say any thing?—I heard him say nothing.

Raymond Kelly, esq. sworn.—Examined by *Mr. Attorney General*.

Do you know Patrick Hargedan, the prisoner?—I do.

Do you recollect having questioned him at any time respecting a gun?

Mr. Baron George.—Pray, sir, before the prisoner said any thing to you relative to the gun, did you induce him to do so by holding out any hope to him, or did you threaten him in any manner?—I did not either one or the other.

Mr. Attorney General.—What did he say?—He said, the *Threshers* were with him a night or two before, and in consequence of their

having sworn him, he went into the house of Robert Banks and took away a gun, and brought it to a private place, that was agreed upon by them, and he left it there for them.

Raymond Kelly, esq. cross-examined by Mr. *T. Moore.*

The prisoner was in custody at the time he mentioned this?—He was, with an officer of the South Cork Militia:

Was he detained afterwards?—No; I told the officer, I would be answerable for him, and he was enlarged.

He has come in voluntarily?—No, the officer took him a second time.

Do you suppose he had any connection with the *Threshers*?—Not previous to that night.

Do you not believe he was compelled?—He told me, they produced a rope and threatened to hang him.

Do you believe what he said?—I should believe it.

Mr. Attorney General.—Is there a magistrate in that neighbourhood?—There is; Mr. Kelly near five miles.

Did the prisoner give any account of this matter to a magistrate?—He did not.

Is there any military guard stationed there?—A detachment of the South Cork Militia was there at the time, and there is now a yeomanry guard.

How far from Foxfort does the prisoner live?—About a mile and a half.

Mr. T. Moore. The prisoner did not conceal from you any of the circumstances?—I believe he told me the same thing, which he told others.

[Case for the prosecution closed.]

Mr. T. Moore.—My lord, I submit, that this is not a case to affect the prisoner's life. His defence has appeared from the cross-examination.

Mr. Baron George.—It will depend upon the opinion which the jury may form of the evidence.

Gentlemen of the Jury.—The prisoner is indicted for having wilfully, maliciously and feloniously supplied a gun to certain disturbers of the peace, under the denomination of *Threshers*; and as has been mentioned by the Attorney General, this offence is subject to capital punishment. It is my duty to tell you, that the law of the land is most unquestionably such as he has stated to you. He is the last man, who on the prosecution of a subject for his life, would misstate the law, or strain it to affect a prisoner with severity. There does not appear to be any contrariety of evidence respecting the facts in the present case. The facts are to be collected from the direct and the cross-examination, and you must consider them to be these:—That a body of men of the description of *Threshers* came to the prisoner in the night—that they did threaten to hang him and that they swore

him to go and take away this gun, of which we may suppose they had some intelligence, and to leave it for them in a certain place agreed upon between them. Gentlemen, you are to take it for granted, that they then left him; and on the next day, he went to the town of Foxfort, where there was a military officer, and not far distant from which there was a magistrate, and under the influence of these threats he took away the gun. He appeared to feel no small sorrow for the act he was doing, and declared, that he acted so, because he was compelled. He took away the gun, and left it in the place for the *Threshers*, and as it has not appeared since, a violent presumption follows, that it fell into their hands.

Gentlemen, having stated this, you are to consider, whether the fact of his having provided this gun and delivered it over to the *Threshers*, persons disturbing the public peace, was excusable, or justifiable under the several circumstances here mentioned. It has been stated to you, that if irresistible force operate upon a man and compel him to do an act at the instant, that force so imposed will excuse him for the act in a court of justice, where his life was in danger, or violent bodily mischief threatened; such an act is not considered as the voluntary act of his mind. The law is undoubtedly so and is as plain as possible. But no force of that sort will excuse a man for having committed a felony, unless that force was held over him at the time of the felony committed. If he were able to extricate himself from the force, and is removed from the reach of it, he is not excusable in doing a criminal act. Gentlemen, this principle of law is founded in good reason; because what would be more easy than to form a combination in which one man should express his fears of the consequence of doing an illegal act, and say to the rest, "Come and swear me and threaten me with death unless I do it—and then I shall be able to defend myself." How is such a combination to be prevented if this kind of defence were allowed in a court of justice? The person accused would always appear as a crying reluctant man, acting under terror of death. Practices of this sort would universally prevail—men would say, they were compelled to commit a particular offence upon one day—a felony on the next—to take away arms and ammunition and leave them in a certain place to be found by rioters and disturbers of the public tranquillity; and the defence for all this would be, that a party came at night and swore the man to commit these acts. What could be more dangerous, than receiving such a defence? The law, therefore, to guard against machinations of this kind, takes care, that nothing shall excuse a man for a criminal act, but that which is done under the *immediate* influence of force, from which he had no opportunity of escaping. The law expects of every man, that the moment the force is removed, he will com-

plain to a magistrate and seek his protection. But if, after the force is removed, and time has intervened, he does the act required of him, such defence cannot avail him.

Gentlemen, you will consider this case, and all the circumstances which have appeared. You will consider what is due to the prisoner and to the public: you will consider the danger of collecting the arms and ammunition of the country in this manner, and taking them out of the possession of honest and well-disposed men—what is to follow and to what uses they are to be applied. Consider, I say again, what is due to the prisoner and the country—and find such verdict as will satisfy your own consciences.

The Jury deliberated for two hours and a half, when they returned a verdict, GUILTY, and recommended the prisoner to mercy.

Mr. Baron *George*.—Gentlemen of the Jury. I will certainly transmit your recommendation to government, and I am sure, that if the state of the country admits of it, the prisoner's life will be spared. But it must be obvious, that no safety remains, if *Threshers*, or other disturbers can go about recruiting their strength in this manner, by which others are induced to commit crimes under apprehensions from them.

Mr. *Attorney General*.—My lord, if it be not an intrusion upon the public time, or improper in me, standing here on the part of the prosecution, I would wish to say a few words. This prosecution was selected by me—God knows, not for the purpose of bringing down punishment upon this wretched man at the bar (for it must be distressing to the feelings of every man to see such examples);—but to show, by the verdict of a jury, this important truth, that if a man commit an illegal act under the allegation of terror from this banditti, he cannot set it up as a defence, for the laws are armed with a terror beyond that which such illegal assemblies can create. Any recommendation from gentlemen of such respectability as compose the present jury, who have manifested their sense of duty to the constitution, so far as I can assist, shall not go without proper comment.—And if the state of the country shall leave the government to its own feeling (although I am not authorized expressly to say so) I have no doubt, that every attention will be paid to such a recommendation, forwarded by the authority of the Court.

JOHN EARLY and MARTIN EARLY were indicted, for that they on the 1st of September, 46th of the king, at Rathmanagh, maliciously and feloniously did assault the dwelling house and habitation of Samuel Rogers—2nd count charged, that they after sunset did forcibly enter the said house. There was a second indictment for a burglary in said house upon the 11th of November in the 47th of the

king—in which there was a count for feloniously stealing and taking the goods of Rogers, to wit, three gallons of whisky, out of his dwelling house, against peace and statute.

The prisoners pleaded, Not Guilty, but refusing to join in their challenges, John Early was put upon his trial.

THE FOLLOWING JURY WAS SWORN:

Robert Patten,	H. Higgins,
George Ormsby,	John Kenny,
Thomas Ormsby,	John Creavy,
Martin Blake,	Robert Fair,
Campbell Fair,	Orme Lundy,
John Nixon,	Henry Stanley.

Samuel Rogers sworn.—Examined by Mr. *Solicitor General*.

Where do you live?—At Rathmanagh.

How long have you been a yeoman?—Two years.

Did any thing particular happen at your house in September last?—There did.

At what time in that month?—About the 1st of September.

Was it in the day time or in the night?—It was night.

What happened?—I was attacked by a party of men, who broke the door to pieces.

At what time of the night was it?—About twelve o'clock. I was brought out and beat severely with guns and sticks.

Of how many did the party consist?—As near as I could guess there were twenty men.

Did they call themselves any particular name?—One man said, "Long life and success to Captain *Thresher*."

Were they dressed in any particular way?—They were: some wore white shirts, and others wore bands upon their hats.

Were you much hurt?—I was cut with a blow of a gun, and received many strokes upon my arms, endeavouring to save my head, and was sore for a long time.

Did they give any reason for this treatment of you?—They did not.

Do you see any of the party here?—This man, John Early, was one of the party.

How long have you known him?—Fifteen or sixteen years.

Did any thing happen to your house in November last?—There did.

At what time?—About the 12th or 14th.

What was done to your house then?—Three men came to the door, and they called for a dram in good English; my wife got up and made down a fire, and upon the delay, the man without called and said, they must come in. She let them in.

At what hour was this?—About 12 at night.

How many came in?—Three men.

Were they armed?—They were.

In what manner?—One had a sword, another a gun and another a pistol. The man who spoke English took away the

whiskey, and brought it to the door. My wife said, "Sure, you are not going to take away my substance."

How much whiskey was there?—Six or seven gallons in a keg; one of them put a pistol to her breast, and said, if she stirred, he would shoot her. They carried away the keg, and I saw no more of them.

Were the men who came the first night armed?—They were with guns, pistols, and swords.

Do you know any of the party who came the second night?—I do.

Whom do you know?—I know the man at the bar whom I pointed out before.

Court.—Had he any weapon in his hand?—He had a sword.

A Juror.—Had he any thing in his hand the first night?—He had a stick.

Court.—How was he dressed?—In a brown coat, with a white band in his hat.

Samuel Rogers cross-examined by *Mr. T. Moore.*

You are a yeoman?—I am.

Is it the practice of the *Threshers* to attack yeomen?—I do not know.

What do you believe?—They attacked them several times, and took their arms.

Mention any instance?—They attacked one *Craig*.

Did they take yeomanry arms from him?—I cannot say; but he was a yeoman.

You and the prisoner have been upon good terms?—We have.

Was there ever any difference or quarrel between you?—There was some time ago.

Did you ever say, that any other person was guilty of this matter?—I did, the other prisoner as well as this man.

Did you ever charge any other person?—I never did.

Did you ever hesitate to swear against these men?—I lodged examinations against them.

Did you stop any time, before you swore, as a good, well-disposed man would do?—I would have sworn informations early, but from dread of my life; but when I was attacked the second time, I thought it right to give information.

You thought the best way of protecting yourself was to take these men up and hold them to bail?—I do not think they were bailable.

You were an armed yeoman and you were afraid. Were you not bound to give informations?—So I did.

But not for a month or two?—After the first attack.

Had you any other person taken up for this offence?—I had not.

You did not know any other person but these two. Was there any dispute between you and either of the prisoners about a still?—There was.

Mention what it was?—I will relate it.

This man and I had a still in partnership; he took it away, and I could not get it out of his hands. We went before a justice, and it was left to reference.

Did any thing else happen between you?—There did not.

Did you not go into his house with a musket and fixed bayonet.—I did.

Court.—When was this?—About four or five years ago; two years before I became a yeoman.

Mr. T. Moore.—On your oath, will you say it was five years ago?—It was between four and five.

Had you any other dispute with the prisoner?—Never any other.

Did you go before Captain Knox?—I did; that was about the still?

They took away the whiskey?—They did.

And the prisoner had a white band about his hat?—Not at the time they took away the whiskey.

You handed out the whiskey?—No, they took it away themselves.

Was the prisoner's face covered?—No, it was not.

How was he dressed, when the whiskey was taken?—He had a straw hat, and straw round his middle.

That did not conceal his face?—No, it did not.

So, he came openly, without any covering, to you, who knew him?—I do not know, whether he desired to hide his face.

A Juror.—What kind of a hat had the prisoner?—A long one, like a grenadier's cap; I cannot well describe it.

How was the straw round his waist?—A wisp of straw round his middle tied with a straw rope.

Court.—Would that disguise his shape?—It might, but I knew his face.

Had he any claim to the whiskey, which was taken away?—He had not; I distilled it myself the day before.

Mr. T. Moore.—Did you not say, you did not intend to prosecute?—If I did itself, that was no reason I should not.

Did you say, it was not at your desire those men were taken?—I did not.

Did you say any thing about detaining them?—I do not recollect.

A Juror.—You said, there were twenty of them?—As close as I can guess.

Are you positive the prisoner John Early was one of them?—Sure enough.

Are you positive he is one of the three men who came the second time?—I am.

Eleanor Rogers sworn.—Examined by *Mr. Solicitor General.*

You are the wife of Samuel Rogers?—Yes.

Did any thing particular happen at your house in September last?—There did.

What was it?—The doors were broke and my husband brought out and beat, and when I went out to escape with my life, they struck

me, and threatened to burn the house over my head, if I spoke of it.

How many were in the party?—I could not tell, upon my conscience, but there were in or about twenty.

Do you know any of that party?—This man John Early, was one of them.

Are you positive he is one of them?—I am.

Did you know him before?—I have known him 14 or 15 years.

Was he dressed in any particular manner?—He was not, but wore a white band upon his hat. The others had some of them shirts and some had not.

Did they say what they were, or call themselves by any particular name?—They commonly call themselves *Threshers*, but they did not that night, but broke in the door, like thunder.

Did any thing happen to the house after?—There did.

Court.—Did any thing happen the first night, besides beating you and your husband?—No, but breaking in the door, and they took out my husband, and beat him and threatened us, if we spoke of it.

Mr. Solicitor General.—How soon after was the house attacked again?—About two months.

What was done then?—They came to the door, and asked for a drop; I got up with trembling steps to get what they wanted. I made a light with the fire and got the keg; they took it from me, and upon attempting to go after them, one of them put a pistol to my breast and said, he would shoot me, if I went out.

How many were there?—Three.

Did you know any of them?—I did, two of them.

Who were they?—The two Earlys.

Is the prisoner one of them?—He is.

How was he dressed on that night?—He had straw upon him.

Was he armed?—He had a sword.

Had the others any arms?—They had a gun and a pistol.

Did they do any thing to you?—They said they would shoot me if I attempted to go after them.

Eleanor Rogers cross-examined by *Mr. T. Moore*.

They brought your husband out of the house?—They did.

You followed him?—Indeed I did not.

They threatened to burn your house?—They did.

In a furious manner?—They did.

If your husband were asked, why he did not swear information, would he not say that he was threatened to have his house burned?—He had fear enough.

You have often talked with him about it?—We knew it well enough without talking of it.

You live about half a mile from the prisoner?—Yes.

Did he come openly then to you?—He did. They said nothing of *Threshers*?—They did not.

Did you ever say that the prisoner was not taken at your desire?—I did not.

Did you say you had nothing to swear against him?—I did not.

Court.—These men lived within half a mile of you?—They did.

Have they any land?—They have some.

Have they families?—One has a child, the other not.

Had your husband a dispute with them?—He had, but we owed them neither spleen or malice.

How long ago was it?—Four or five years.

Had you any other quarrel?—We had not.

How long before the first attack did you see them?—Almost every day they passed the door.

They had no disguise upon them that night?—No.

Why did you not charge these men at that time?—Suppose they threatened, they would burn the house over our heads.

Had they no other purpose, but to beat your husband that night?—I believe not.

Had your husband any arms?—No, he sent his fire arms to captain Knox, when the disturbances began.

Did these men search for any arms?—They swore him, whether he had any French arms, or ammunition.

Had they a book?—They had some sort of a book.

Who swore your husband?—I cannot recollect which of the party.

Was it in the house, or out of it, that they swore him as to the arms?—It was in the house.

Samuel Rogers called again.

A Juror.—When the people first came to your house, did they administer any oath to you?—They did, the first time.

Court.—What was the reason you did not make mention of the oath before?—It was a matter before my examination; I was not asked it. They came three or four times.

[The witness, *Samuel Rogers*, was then removed out of hearing, and the *Attorney General* resumed the examination of *Eleanor Rogers*, for the purpose of seeing whether they would be consistent.]

Upon what kind of a book did they swear your husband?—I did not handle it, but felt it as the man was offering it to my husband.

Was it one of the twenty men who swore him?—No.

Was it upon the same night when the twenty men came?—No.

How long before that was it?—A fortnight.

How many were of the party then?—Seven or eight.

Did they do any thing else but demand arms and swear him?—Nothing else.

Did they break open the door that night?—They did; they desired the door to be opened, and broke it open.

Were you in bed at the time?—We were.

Did they offer any violence?—They struck me.

Did they hurt your husband?—They did not; he was at the fire side, and they thought it me was there.

Was it inside the house they swore him?—It was.

Had they any light?—Nothing but the moon.

How could they know your husband?—They knew his voice.

Did your husband say any thing to them?—He desired them to listen to him.

Why did you not state this in your information?—Because we knew nothing of them.

Did you ever tell any person of this attack upon your house?—Every one heard of it, the country knew it all round.

Who was your next neighbour?—Michael Lyons.

Did you tell him?—They all heard of it.

How soon after?—The next morning.

Is there any person here to whom you told of that first attack?—My brother-in-law Robert Gardiner heard of it.

Court.—How many times was your house attacked?—The first time was when they swore him had he any arms.

How soon after did they come again?—In a fortnight.

Was that when the twenty men came?—Yes.

When did they come again?—The third time they came for the whiskey.

Samuel Rogers re-examined by Mr. Attorney General.

How often was your house attacked within the last twelve months?—Three times.

Was it three or four times?—Three times violently. Some came one time without violence, I do not reckon that an attack.

How long before the attack when the twenty men came was the first?—About a fortnight.

How many were there at that time?—Eight or ten.

Did you get out of bed?—As fast as I could.

Was it out, or inside the house they swore you?—Inside.

Was it upon a dollar they swore you?—No, but upon a book.

Did your wife run out at the time they were swearing?—She ran out, but not that night; it was the next night they came she ran out.

Where was your wife the time they were swearing you?—I cannot tell.

What was she doing, when they were swearing you?—I cannot recollect, being so puzzled.

Did you tell any person of this?—I did not deny it of any one.

To whom did you speak of it?—I told many that they took away my gun.

Did they get a gun that night?—They did.

Where was it?—Near the fire.

Was it a yeomanry musket?—No.

What became of that?—I sent it to captain Knox, lest it should be taken from me.

When did you get the gun which was taken from you?—I got it about the time of the rebellion.

Can you mention any one person to whom you gave an account of the attack the night they swore you?—I cannot recollect.

Why did you not mention it when you swore informations?—Because I did not know any of them.

Did they commit any violence that night?—They struck my wife.

How came that?—Because in the dark they mistook her, I suppose.

How did you see the book?—I would know a book when it was put into my hand.

When you lost your gun, why did you not as a loyal man, give information to a magistrate?—They threatened to destroy me, if I gave information of it.

Where was your wife, when the oath was administered?—Hard by me.

Where was she standing?—I dare say she was sitting on the bed side.

How long were they in the house?—I can't say, I had no watch.

Samuel Rogers cross-examined again.

You have some neighbours next door to you?—There are.

How near does John Flynn live to you?—Next door.

Did he hear of this attack?—He had a right. The *Threshers* often came to him.

Do you know Edward Nallen?—I do.

Could he hear of it?—He might, or might not.

Robert Orme sworn.—Examined by the Solicitor General.

Have Rogers and his wife been kept separate during their latter examination?—The man was desired to leave the court, that he might be out of hearing while his wife was examined, and he did not return till her examination was closed.

DEFENCE.

Edward Nallen sworn.—Examined by Mr. T. Moore.

Do you know Samuel Rogers?—I do.

Do you know his wife?—I do; she is my uncle's daughter.

Had you any conversation with them, with regard to the arrest of the prisoner?—I had.

Did they say any thing concerning them?—The first time Rogers's house was broke, I was very sorry for it, and I went to them and found them crying, and I began to cry myself. I gave her every encouragement, and when

she was done crying, I desired her to have courage, and these people would soon be put down: "My dear," says I, "do you know any of these people?" "Troth, I did not;" said she, "both me and my husband."

Court.—Was any thing taken that night?—Not that I heard of: said I, "Did you know any of these rebels that came to you?" "I do," said she, "but cannot mention them;" I pressed her, and she told me, the two Cavanaghs and other names; and when I heard of her losing the liquor some time ago, and that these two men, neighbours, were taken up, whom I never suspected, Samuel Rogers came to me, and I said, "If Early be guilty, all the country are *Threshers*;" "I think nothing of the liquor," said he, "but of the keg, which was a snug one." I desired him to take his money, rather than prosecute his neighbours, though he was not friendly with them, for they had a dispute about a still five years ago, and another about a cask of spirits twelve months ago.

*Edward Nallen cross-examined by
Mr. Attorney General.*

How do you know all this?—Because I was in the same village, and was present.

What was the dispute?—They wrangled about a cask of spirits; and Rogers took a bayonet and a gun, and said, he would stab him, if he did not give up the cask.

Who was present at this?—John Flynn, and another.

Then they were always enemies and could not agree?—They were friendly enough after the first quarrel; but they fell out again.

How near do you live to Rogers?—Near a quarter of a mile.

They are relations of your's?—Yes.

You are fond of them?—I wish them better, than all the Earlys in the world.

Why were you so anxious to know the names of the persons who attacked them?—That if she would let me into the secret, I would let her into another.

If she told you some names, you would tell her more?—No, she would tell me if she dare.

Who frightened her?—The mob.

Is there a mob in the country?—There is.

Did you hear that Rogers lost his gun?—I did; they said, the Neylans took it.

Did he tell you of that?—He did.

How soon after?—The next day.

Did he tell you he was sworn by them?—He did.

Was that at the same time they took the gun?—It was.

Did they break the door?—They told me the door was broke.

When was the second attack?—I did not hear of the second, only the first and the last.

When was the second?—I don't know, I only heard the people of the village speak of it.

But there were three attacks?—I suppose there was.

And you heard of the first and last from Rogers, and of the second from the village?—Yes.

The gun which was lost was not the gun, which Mr. Knox gave him?—No, but an old gun he had from the time of the rebellion, according as he told me.

You have no connection with the prisoner?—No; neither kit, kin, nor relation to him.

You expect nothing from them?—None at all.

But you are anxious to serve your cousin Rogers?—I know the prisoners to be honest.

And your cousin was a rogue?—No, the woman was not.

Well, her husband was?—I say nothing against him.

You take no interest about the Earlys being acquitted?—I do not care, whether they are, or not, but in justice.

Upon your oath, did you never exert yourself to get them discharged?—No, but to give honest evidence.

How soon were the Earlys taken up after the last attack?—The night after.

Was that the night of the day you had the conversation with Mrs. Rogers?—It was.

What did she say?—She said, the whiskey was taken, and she suspected the Earlys for it, but would not charge them for one thousand guineas till she got better proof.

How did you introduce the conversation?—She introduced it herself.

The Earlys were in confinement at that time?—They were confined in the guard-house.

And it was in consequence of that, you went to talk to her?—Rogers sent to me, to settle the matter; he said, he would liberate them, if he got the price of the whiskey; I told them that and they said, they would suffer to be hanged first, before they would pay, because they were innocent.

Court.—How much did he demand for the whiskey?—Thirty-two shillings.

Mr. Attorney General.—Did you ever talk to the Earlys upon the subject of this charge?—Not till after I received a message from Rogers.

Did you not before that time?—Never, only to come here to give evidence.

But you went to the guard-house?—No, but they sent a woman of the name of Peggy Kelly.

Then it was Peggy Kelly told you of the message and took your answer?—Yes; I went to Mr. Moystyn, to see, if he had any objection to liberate the Earlys, if Rogers was satisfied, upon being paid the price of the whiskey. He asked, "Was it from them I came;" Rogers would not consent, therefore Moystyn would not do it.

Did Moystyn say he would do it, if Rogers was satisfied?—I went to Rogers and told him he would be paid, and I said I would pay it myself, before the Earlys should remain in prison; but Moystyn would not be satisfied,

without a courier from themselves; so there was one sent, but the Earlys said, they would not pay a shilling, but would rather go to Castlebar for twelvemonths, or be hanged, before they would pay.

Who was sent as the courier?—Peggy Kelly.

Did you ever offer Moystyn any thing to release the prisoners?—I never did.

What was the price put upon the whiskey?—Thirty-two shillings.

What is your line of life?—A tradesman.

What trade are you of?—A mill-wright.

Are you rich?—Rich enough: I would not give my trade for one thousand pound.

A Juror.—Do you say that upon your oath?—I do not say that upon my oath. I am not to tell you, what I value my trade at.

Court.—Would you give up your trade for one thousand pounds?—Not if I were in the beginning of my years.

Mr. Attorney General.—Did you ever make one thousand pounds?—I did.

What are you worth now?—Four hundred pounds.

Have you that sum at interest?—No, but in my house, cattle, and property.

And you would pay the money for the prisoners to obtain their release?—I would; not only for them, but for any Christian, though more a stranger.

Jury.—Did you ever offer money to Moystyn, to release the Earlys?—I offered him money in payment of the whiskey.

Was that before you sent Polly Kelly?—It was after.

By whom did you send the message?—By her.

You said, they returned an answer by her, that they would not pay, but would suffer to be hanged. Was it then, you went to Moystyn, and offered to give him thirty-two shillings?—I did not offer it, unless they would consent to pay it.

Did you offer him any money of your own?—I did, the price of the whiskey, rather than they should remain. But I did not offer the money unless he would liberate the man, and he would not, unless the prosecutors were satisfied, and they would not do it.

Was it after they refused, that you went to Moystyn?—I will answer no more.

Was it after the message brought by Peggy Kelly, that you went to Moystyn?—I do not know what you say, you have bothered me so much.

Thomas Knox sworn.—Examined by Mr. T. Moore.

Do you know the prisoner at the bar?—I do.

What is his general character?—I know very little about him, but never knew any thing to his disadvantage.

Do you know the prisoner personally?—I do.

How long?—Five or six years.

Do you know Rogers?—I do.

What is his character?

Mr. Solicitor General.—My lord, I object to that question. If the counsel intend to impeach the evidence of Rogers, there is a legal mode of doing it, which ought to be adhered to.

Mr. T. Moore.—You say you know Rogers?—I have no particular knowledge of him.

Thomas Knox cross-examined by the Solicitor General.

Do you live in the neighbourhood of Rogers?—I do.

Have not the Threshers been in that neighbourhood?—They have.

Pretty much?—I have heard so.

Rogers' house was attacked three times?—It was attacked, but how often I cannot recollect.

It was attacked more than once?—It was.

Did Rogers give you up any arms to take care of?—No.

You are not captain Knox?—No.

Do you know Nallen?—I do.

What is his situation in life?—A wheelwright.

Is he a man of opulence?—Not that I know of.

What sort of a house does he live in?—A common cabin.

Is he worth 400l.?—No.

Is he a man of such substance?—No.

Is he a common labouring wheelwright?—He is.

Did you hear him swear he was worth 400l.?—I did.

Did you believe him?—I did not.

How long have you known him?—Many years.

Have you ever known him to live so comfortably as to think him worth 100l.?—No.

Has not Rogers, the prosecutor, the character of an honest man?—He has.

[Defence closed.]

George Moystyn sworn.—Examined by Mr. Attorney General.

You are permanent serjeant of the Crossmolina corps?—Yes.

Were the two prisoners taken up by you?—They were.

Upon whose information?—Upon the information of Rogers.

Did he state that he knew the prisoners?—He said he knew them perfectly: he desired me to go down and take them up, or they would go off in the morning.

Do you know Nallen, who was examined here?—I do, sir.

Did he ever make any proposal to you, with respect to the prisoners?—He did.

At what time?—I do not recollect exactly, but it was after the informations were sworn, it was two or three days after I took the prisoners.

What proposal did he make?—He asked me if I had any objection to discharge the prisoners, if Rogers was paid. I asked him did he come from the prisoners; he said no, as he would not be allowed to go into the guard room, but the woman who went with their victuals, brought a message from them. I said I had much rather he went to the prisoners themselves; he said he would not. I then asked him for the money; he said he had not so much money, but would pass his note to Rogers.

Would you have discharged the men, if he had paid the money?—I would not, because informations were sworn against them.

Then why did you listen to this proposition?—To see if it would corroborate Rogers' account. I wished to assist in punishing every person of this rebellious description; and if every magistrate and gentleman exerted himself, there would soon be an end of it.

George Moystyn cross-examined by *Mr. T. Moore*.

Nallen told you he brought a message from the prisoners?—No, but that a woman brought him a message from the prisoners.

Did he say any thing of Rogers?—He said if Rogers would be satisfied, but I knew Rogers' mind.

Would he not have liberated them, if he got the price of the whiskey?—I am sure he would not.

But why talk of doubt as to proof, if he was sure of their persons?—Because he was told that Mr. Knox was to bring persons forward to impeach his character, and I was anxious to have some corroboration, and wished to support his character as a fair honest man.

Did Mr. Knox intend to impeach his character?—I do not say that.

Do you think Mr. Knox would interfere for people concerned with *Threshers*?—I told him of their crime, and he came forward to interfere; I suppose he was uneasy for his tenants.

The Earlys are his tenants?—They are.

Jurymen. Did you see Mr. Knox who was examined here?—I did.

Is that the gentleman you speak of?—No, sir, it was Henry Knox.

Mr. T. Moore.—My lord, there is no other witness for the prisoner. It is impossible to go into the defence of an alibi, because the prosecutor does not state the particular nights.

Mr. Baron George (after stating the indictments and the evidence) said,—Gentlemen of the Jury; upon this evidence, there is no question, that the house of Rogers was repeatedly broken into by persons of the description, which has been stated to you, and about the period of time mentioned in the indictments. But, gentlemen, you must perceive, that as Rogers does not swear particu-

larly as to the time when those offences were committed, the persons charged are deprived, as has been stated by counsel, of the defence, which otherwise they might have, of showing where they were upon the particular night, if such had been stated. It would be unreasonable to expect, that the prisoner in this case should be able to produce witnesses to that fact. Therefore, gentlemen, you will consider all those circumstances. The fact of the house being attacked and the owner plundered, seems to be notorious, and the single question for your determination is, whether the prisoner was one of the party who committed that offence.—He is positively sworn to, and if under all the circumstances, you believe the evidence, there is no doubt it maintains the indictment. But if, upon the whole, you have a rational doubt of the guilt of the prisoner, it is your bounden duty to lean to the side of mercy and acquit him.

The Jury retired, and after deliberating about half an hour, returned a verdict, Guilty.

Friday, December 12, 1806.

Mr. T. Moore moved to postpone the trial of *WILLIAM M'PHADEEN*, to the assizes, upon an affidavit made by the prisoner, stating that he heard, that the right hon. *Denis Browne* had spoken to the jurymen, who had tried and acquitted *James M'Phadeen*, the prisoner's brother, and reprobated their conduct.

Mr. Baron George.—That is not sufficient ground to postpone the trial; none of that jury shall be sworn upon the present if the prisoner objects, so that he need be under no apprehension in that respect.

Mr. Browne.—My lord—

Mr. Baron George.—It is not necessary you should say any thing upon this occasion.

Mr. Attorney General.—My lord, *Mr. Browne* has requested me to solicit your lordship, that as the prisoner has applied to postpone his trial, your lordship would be pleased to comply with the application.

Mr. Baron George.—I never saw an instance of such tenderness to a prisoner: this conduct is founded in principles of humanity, and I sincerely hope it may tend to the peace of the country. Therefore let there be a special memorandum made, that the trial is postponed—not upon the affidavit—but upon the application of the prisoner and the Attorney General consenting.

[Trial postponed.]

PATRICK FLYNN was indicted for perjury committed by him upon the trial of *Patrick Rategan* and *Dominick Connor*,* and being convicted, was called up for judgment.

* Vide p. 124.

Mr. Baron *George*.—Patrick Flynn, you appear to be one of those wicked men, who go about at night, attacking the habitations of peaceable men;—you were taken in the fact of being riotously assembled with many others, at night, and from a motive of lenity and mercy, you were received to give evidence against your fellow conspirators. But it now appears, that their false and illegal oath has more obligation upon you, than the oath which you took in the presence of God and of your country—the latter has been disregarded, for the purpose of saving your associates from punishment. If they had been convicted, they would have been subject to whipping and imprisonment. But see, how you have disappointed and deceived yourself—you are now exposed to punishment and shame—you shall be put in the pillory, as an example of scorn and indignation—and afterwards, you shall be transported for seven years as unworthy any longer to tread upon Irish ground.

JAMES MAME, RICHARD MURPHY, and JAS. CLENANE were indicted, for that they, intending to excite and instigate the liege subjects of the king to enter into unlawful combination and confederacy, on the 12th of August, in the forty-sixth year of the king, at Barnycarroll in the county of Mayo, did knowingly, maliciously and feloniously publish and deliver a certain message tending to excite unlawful combination and confederacy, which message was of the import and effect following: "that they were sent by the *Threshers* (meaning a certain combination and confederacy formed for seditious purposes and for the disturbance of the public peace), to inform the priest and the inhabitants of the parish of Kilcolman, that the said priest must reduce his charges for his duty, and that no person should pay more than three shillings an acre for tithe in future," against peace and statute.

There was a second count for publishing and delivering a message tending to excite unlawful combination and confederacy, generally.

A third count, for circulating a notice to the same effect as in the first; and a fourth count, stating the notice generally.

The prisoners pleaded, *Not Guilty*, and joining in their challenges, the following jury was sworn:

Francis Elwood,	John Dennis,
Thomas Kirkwood,	C. H. Higgins,
Peter Lynch,	Thomas Heran,
Ralph Brent,	Robert Fair,
Thomas Rutlege,	Wm. Ferris,
George Gildea,	Campbell Fair.

Thomas Jordan sworn.—Examined by the Solicitor General.

Where do you live?—In Barnycarroll.
Do you recollect being at the chapel, when
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any thing particular happened?—I do, in consequence of a notice put up the night before.

When was it?—It was early in October, I think the 10th.

State the particulars which happened?—There was a notice posted up on the chapel door, laying down rules for the payment of dues. The priest began to speak after mass.

What did he speak about?—He spoke of those, who wished to stint him in the prices, and to lay down rules.

Did any other person speak, or address the congregation?—There did. Clenane, one of these men.

Do you see him in court?—This is he.

Do you see any other person, who was there?—Yes, this man, Richard Murphy; I knew him well by eye-sight, but did not know his name till that day, though living in the same parish.

What did Clenane say?—When the priest was done speaking, relative to that matter, Clenane said, he was forced to come, and he came with reluctance to give him the same message that was in the notice.

Did he say what it was?—It was laying down rules, that there should be only half-a-guinea for marriage, nineteen pence half-penny for christening, and one shilling and a penny for private mass.

Was there any thing in the notice or advertisement about tithes?—Not to my knowledge.

Did any thing farther pass?—After we went out of the chapel, there were some of the parishioners curious to know what it was, and asked these men, not hearing what they said, what were the rules.

Whose rules were meant?—The *Threshers*.

What answer was made?—Clenane said, 3s. 3d. an acre for potatoe soil for the tithe of the protestant clergy, and so forth, and so in proportion; nineteen pence halfpenny for christening, and that no more was to be allowed by the people who sent him there.

Did Murphy say any thing?—I asked him myself the same question when we were abroad, and he told me, they came out upon the same errand, and he told me the same particulars. I was the only man who had put in my corn, for it was destroying in the fields, by pigs and cattle, and I took the liberty of fetching it home. The whole parish were afraid of these *Threshers*, and these men told me, that they brought this message, they did not intend to be any longer concerned, and that they came to save their lives.

How far do they live from the chapel?—About a mile and a quarter: I spoke to them not to hurt me, if they came that way, as I was the only person in the parish, who took the liberty of putting in my oats.

Thomas Jordan cross-examined by Mr. T. Moore.

Was not this the parish chapel of the prisoners?—It was.

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Do you not believe they cannot read or write?—I believe they cannot.

Have they families?—They have.

If they refused to go on such a message, might they not lose their lives?—Either that, or they would suffer some severe punishment.

If you were desired to do the same thing, you would not dare to refuse?—I would do any thing to escape death; but as to coming to the chapel, it was not my intention.

Do you believe these persons had any other connection with the *Threshers*, than what you have mentioned?—In my opinion, they had not.

The last conversation was with yourself, and not in the way of a proclamation?—It was in answer to my question; I was wishing to protect my oats in the haggard.

They said, they would not interfere further?—I begged them to protect my little substance if they should be concerned; they said they would not interfere farther, and that they came to escape death.

Patrick Fleming sworn.—Examined by
Mr. Sergeant Moore.*

Where is your parish chapel?—In Barnycarroll, in the parish of Kilcolman.

Do you know the prisoners Clenane and Murphy?—I do.

What day of the month was it?—I lodged informations on the 13th or 14th, and it was the Sunday before.

What did you see them do, or hear them say?—The two men stood in the midst of the chapel, and after mass, one of them said, they were sent by the party going about, and did not wish it, if they could help it, to let the clergyman know, he must abide by his former dues, and 3s. 3d. an acre; and after he had done, the other said he came of the same message.

Which of them spoke first?—Clenane.

Then Murphy said he came of the same message?—He did; they were both together.

Were there many of the parishioners present at that time?—As many as there were hearing mass; the chapel was quite full.

Did they whisper the priest, or speak aloud?—They spoke it loud.

Did you hear them say any thing outside the chapel?—I did not.

Patrick Fleming cross-examined by
Mr. T. Moore.

Was Jordan present at this time?—He was.

Did they not say they came with reluctance?—They did.

Do you not believe they did?—I should suppose so, for they are too old to go upon bad schemes.

* Mr. Sergeant Moore had remained at Sligo to conduct the prosecutions there, and did not arrive in Castlebar, until Thursday the 11th December.

Was there any thing said of notices?—As I was going to the chapel, I heard some of the people say, there was a notice upon the chapel door, but I did not see it, and cannot speak to a knowledge of it.

George Lyons sworn.—Examined by
Mr. Attorney General.

Were you at the chapel of Barnycarroll in October last?—I was.

At what time?—On Sunday, the 10th.

Do you recollect any thing particular happening there?—I do; two men came in and said, they were sent of an errand by a party of men, who came to them some nights before, and put them to their oath to tell the clergyman to put down part of his yearly wages and charges, and that no more was to be paid to the proctor, than 5s. 3d. for oats.

Was this after prayers?—It was.

Was it while the congregation was there?—Yes, in the chapel.

Did they speak loud?—They did; I was at the far end of the chapel, and they at the door, and I heard them.

When the congregation went out, did you hear these two men say any thing?—No, I did not.

Try if you see the men?—They were strangers to me; this is one of them [pointing to Clenane], but I am not sure as to the other.

George Lyons cross-examined by
Mr. T. Moore.

Have not these prisoners large families?—I cannot say; they are strangers to me.

Do you not believe that they are not connected with the *Threshers*?—I cannot say.

A Juror.—How far do you live from them?—About four miles.

In the same parish?—Yes.

And you are not acquainted with them?—There are 100 men in the parish I do not know.

Did you ever see them before?—Not to my opinion.

Thomas Swannick sworn.—Examined by
Mr. Attorney General.

In what parish do you live?—In Kilcolman.

Do you keep the pound?—I do.

What pound?—Of Barnycarroll.

Where is it situate?—Just at the chapel.

Who is the coadjutor of that parish?—Thomas Prendergast.

Did he come into your house any time last October?—He did.

What time of the month?—On Sunday the 10th or 12th, I am not certain.

Do you know James Mame?—I do, this is the man [pointing to the prisoner].

Do you know his person well?—I do.

How long have you known him?—Fourteen or fifteen years.

Does he live in your parish?—He does.

How far from you?—Three miles.

After the coadjutor came to your house, did you see Mame, the prisoner?—He came while the priest was there drawing on his boots, and said, he was sent on a message by the *Threshers*.

Did he mention what it was?—He did; he told him, that he should come down to half a guinea for marriage, 19 $\frac{1}{2}$ d. for christening, and 1s. 1d. for mass, and no more should be paid than 3s. 3d. an acre for tithe.

Did he state that he was authorized to come with the message?—He said he was forced to come.

Did he say how he was forced?—No.

Were any of the parishioners present?—There were.

Did he speak aloud in their presence?—He did; they could not but hear.

Had there been any notices posted up by the *Threshers*?—There was a notice put up on the chapel door, the night before, and in the morning father Barry tore it off, as he passed through the village.

Did you read it?—I did, part of it.

Was it to the same effect as the message?—It was.

Thomas Swannick cross-examined by
Mr. T. Moore.

Do you not believe that Mame was forced?—He said so, at the same time.

Is he not an honest, quiet man?—He is, no doubt.

Do you not believe, that the *Threshers* generally go to quiet men, and get them to carry their messages?—They do.

Mr. Attorney General.—Is that for the purpose of escaping punishment?—I suppose so.

Mr. T. Moore.—Could they remain in the country, if they refused to go of the messages?—I cannot say.

What do you believe?—They would be in dread of their lives, if they were not protected.

A Juror.—Is there any magistrate in the neighbourhood of this prisoner?—There is; Mr. Madden, Mr. Kirwan, and Mr. Rutlege.

What distance are they from him?—Two miles.

Mr. Attorney General.—Are there many gentlemen in the neighbourhood?—There are.

Mr. T. Moore.—Could these gentlemen protect him?—I believe they could.

George French sworn.—Examined by
Mr. Solicitor General.

Do you recollect taking any persons into custody?—I do, upon a warrant of the right hon. Denis Browne.

What were their names?—Mame, Murphy, and Clenane. These are the men here [pointing to the prisoners].

Where did you take them to?—I left them in the constable's house at Clare, 'till Mr. Browne got up in the morning.

While they were in your custody, had you

any conversation with them upon the subject of the *Threshers*?—I will tell all that passed. I went to Clenane's house first, he being furthest off; I knocked at the door, and saying I was a friend, he let me in: it was half-past twelve; I asked him what kept him up 'till that hour, he said, what is that to you; when the candle was lighted, he knew me, and I asked him again what kept him up; he said, they had been dressing flax, and the fire was so great, he staid up 'till it burned out. Seeing him barefooted, I asked for his shoes, which he produced, and I found them clean; I searched for other men, but found none there; I desired him to put on his clothes, he asked for what business; I asked him was he at Barnycarroll, "aye" said he, "and if you were brought out in your shirt, and threatened to be carded, you would go yourself to that place." I then went to Murphy's, I knocked at his door; he asked, who is there; I said, a friend; so best, said he; a candle was got, and when he knew me he bid me welcome; he had been in bed; I desired him to put on his clothes, telling him, that Mr. Browne wanted him. Why, said he; I asked him, was he at Barnycarroll, and what bad luck brought him there; "it was that sure enough, said he; the *Threshers* came some nights back and took me out, as I am now, and shook the cards to threaten me, that would strike terror into the mind of any man;" I asked him, were there many; he said, there were; I asked him, did he know any of them; he said, he did not, as they had shirts on, and hats over their faces.

Did you then go to Mame?—I sent two men before me, lest he should get an account, while I was at Murphy's. When I got there, I desired him to get up; the poor man did so. I told him he must come to Mr. Browne; he said he would go readily; I asked him no questions, but brought him with the others to the constable, and I told the right honourable in the morning.

A Juror.—Do you know these three men?—I know two of them well, but do not know much of Clenane.

What are their characters?—I heard nothing, but was proper and honest of the men.

George French cross-examined by Mr.
T. Moore.

Have they not families?—I believe they have; there were children lying in the *colliough*, when I went into Mame's house.

DEFENCE.

James Madden, esq. sworn.—Examined by
Mr. T. Moore.

Are you a magistrate of this county?—I am.

Do you know the prisoners?—I have known Clenane fifteen years.

What is his general character?—The most

confidential man I ever had, and I believe if I had not been at the saltwater at the time of this transaction, he would not have gone to the chapel.

Do you know the other two prisoners?—I do; they were men of good character.

James Madden, esq. cross-examined by Mr. *Attorney General*.

Has it not been the policy of the *Threshers* to go to persons in the night and swear them to carry their messages in the day time?—I have heard so.

Then their policy is, that as they would be liable to punishment, if they appeared by day, they prevail upon others, with the hope, that these will escape punishment by the representation, that they acted under terror?—I believe they wish to make such people the instruments to accomplish their purposes.

And in that manner they succeed in having their messages carried through the country?—I believe so, because they dare not appear in the day-time.

Thomas Ormsby, esq. sworn.—Examined by Mr. *T. Moore*.

Do you know the prisoners?—I know Mame.

What is his general character?—I always looked upon him as a quiet honest man.

[Defence closed.]

SUMMING UP.

Mr. Baron *George*.—Gentlemen of the Jury; in this case, these three unfortunate men are indicted in the manner which was stated to you, at the commencement of the trial:—the substance of the charge is, that they have carried about messages and circulated notices from the *Threshers* in support of this conspiracy, which has been disturbing the peace of the county. It is not necessary to go through all the evidence, because the facts are not disputed. It is proved, by the testimony of concurrent witnesses, and by the acknowledgment of the prisoners themselves, that they did go to the chapel, and as from the *Threshers* deliver this message in the face of the congregation—two of them went into the chapel and the other went to the coadjutor after the service and in the presence of some of the parishioners, delivered the same message. When they are apprehended for this crime, they very freely acknowledge, that they did go and do as has been represented; but they state, that a few nights before, a body of *Threshers* came and whetted cards and threatened to punish them, if they did not go to the chapel and deliver the message. Therefore their defence is, that they were not voluntarily disseminating mischief through the country, but were doing this act under terror, and from fear that grievous punishment or death might ensue, if they did not go as required.

It appears to be the practice of these abandoned men, to go to the honest persons, and to put this compulsion upon them—to swear them to circulate their messages, thinking that by such means the law will be evaded, and that no person can be punished. But if this were permitted, the consequence would be mischievous to the community, and therefore you will consider the question, which you are to try. If the issue were, whether these unfortunate men at the bar are great objects of compassion and mercy—every man must pity them from the bottom of his heart—but are these things to continue?—If courts and juries, upon their oaths, determine against the written laws of the land, that such proceedings may be carried on and the persons thus employed acquitted, there will be messengers abundant. We must consider how the people are to be protected and the laws administered. Was ever such oppression heard of, as has been disclosed in this case, and can the country tolerate it? The farmers cannot draw home their corn for fear of the *Threshers*. One whose corn was devouring by pigs and cattle ventured to draw it within his little haggard, and he thought it necessary to make his peace with these men for so doing. Did you ever hear of such tyranny? Suppose the *Threshers* swore a body of men to go and administer an oath to the inhabitants of a village, and if they did not, they would be carded. Would it be an excuse, that they did so through fear? Would it be an excuse for robbery or murder? It is right, that this matter should be known—I have reflected much upon cases like this, and it is a distressing office for a judge or jury to preside upon such trials—But, gentlemen, we are bound to enforce the law and to put a stop to mischiefs which would otherwise be incurable. No man feels more for the unfortunate prisoners than I do. You also feel for them: but we have a duty to perform.—It is mine to tell you what the law is, and it is your duty to find according to that law. You will consider of the case and do justice to the country and to the prisoners.

The Jury retired, and after deliberating some time, said they were disposed to find the prisoners guilty, if they were not to be hanged or transported. The judge said, the jury had nothing to do with the punishment, but if they chose to recommend the prisoners, he would transmit the recommendation to government.

The Jury retired again, and after deliberating further, found the prisoners Guilty, and recommended them to mercy, on account of their ignorance of the law—their great age—their good character, and large families.

Mr. Baron *George*.—I will transmit your recommendation to the lord lieutenant.

Mr. *Attorney General*.—This prosecution was instituted to show the people, that they cannot avail themselves of this defence of

terror to violate the law; but when a jury act according to law, their feelings shall be attended to, and no impediment will be thrown in the way of the recommendation of such respectable gentlemen, forwarded by the authority of the Bench. However, government may not be able to extend mercy, unless quiet be restored:—if lawless persons continue to disturb the peace of the country, they may put it out of the power of government to extend that mercy, which they otherwise would be inclined to do.

MARTIN EARLY was put to his challenges, and the following jury was sworn:

John Perkins,	Richard Leviston,
John Gildea,	John Warren.
Francis Goulding,	Wm. Tully,
Wm. Ricby,	Moses Gray,
Sam. O'Malley,	Mat. Evans,
Edward Sprengle,	Thomas Rutlege.

The prisoner was given in charge upon the indictment stated in the case of John Early—The same evidence was adduced as in that case, and the prisoner was found Guilty.

Coll Flynn, Laurence Flynn, Charles Flynn, Thomas Horan, Daniel Regan, and Daniel Callaghan were brought up for judgment, and asked what they had to say why execution should not be awarded.*

They made no answer.

Mr. Baron George.—You have been very deliberately tried by a respectable and intelligent jury, who considered seriously upon your case. They returned a merciful verdict; for there were four other persons tried with you, charged with the same crime, and lest any mistake should intervene (although there was very strong suspicion)—the jury acquitted these four men, and I believe the verdict which found you guilty was felt by every person present at the trial, as a just and satisfactory verdict. I am bound to say, that it was a verdict concurring with the opinion of the court.

* The offence with which you were accused was of great enormity. You have been engaged in a confederacy most alarming and destructive of the public peace and the public safety. You have combined and united yourselves with a set of abandoned miscreants, who have spread misery and alarm through the whole county; and in furtherance of their designs, you committed a crime of the blackest enormity. It is from that confederacy that all these misfortunes and miseries flow: You became members of a wicked association, who go about in the night time, disturbing the peace, destroying the property and endangering the lives of the inhabitants of the country.

It appears, that the unfortunate deceased

man, Thady Lavin, had been a member of the same wicked assembly, and that he, having some remorse, did think it his duty to put a stop to these outrages, and therefore he gave information to a magistrate, which was likely to prove useful and beneficial to the public: his doing so had a direct tendency to save the lives of numbers; for how many must fall, if these proceedings are allowed to go forward? It would seem, that he gave true information, and was to be considered as a public benefactor. But that was an offence, not to be forgiven, and it was accordingly determined to destroy him. This crime was committed with a view to stop the course of justice—with a hope, that when that man was destroyed, the laws of the land would be silent and ineffectual, and no longer afford protection to the king's loyal subjects. What greater enormity can be conceived, than an offence committed with such views! You do not declare your purpose to the unhappy victim, nor openly attack him—but you draw him into dalliance, and treat him with feigned kindness, and with expressions of affection for him and his family.—In this manner he was enticed to the house of Laurence Flynn, where he was instantly surrounded by all the friends and connections of the persons he had accused: he is there caressed with apparent cordiality, until a set of ruffians, armed with deadly weapons, rush in and destroy him, while you all sit present, delighted at what was passing! The unfortunate woman of the house not prepared for such a scene, was thrown into convulsions! I mention these circumstances, not to reproach any of you, but for the purpose of impressing your minds with a sense of your crime, and that you may make the best use of the few hours which yet remain for you, until you appear before another tribunal and a higher Judge! I trust in God, it may have a salutary effect upon your minds and consciences, and may dispose you to make some atonement to your country, which you have so much injured. I therefore exhort you to consider of your situation and not to deceive yourselves by thinking you can deceive God or the people, by saying you had nothing to do with the death of this man, because his life was not taken away by your hands—and that you did not murder him in the horrid manner which has been described. Doubtless you did not—but you appear to be the persons, who brought him to that spot and detained him by dissembled kindness until the murderers were introduced—they were not more deadly to him, than you, who appeared to be his friends. I therefore exhort you, not to sin in your graves, not to attempt to brazen out a case of this nature—but confess your sins—pray to be forgiven—repent, and exhort all other deluded men to take warning by your example. Discharge the weight of guilt from your souls, in order that you may leave this world in a state fit to appear before the throne of

* See p. 97.

God, who is all purity and truth. Him you cannot deceive by any declaration, and do not leave this earth with any thing but truth upon your lips. Take this advice, and I hope it will have a good effect. The peace of the country requires an example to be made without loss of time in this case—I am therefore to tell you, that all of you, except Daniel Callaghan, must undergo execution on to-morrow, and that he will suffer upon Monday next.

His lordship then pronounced sentence in the usual form.

Saturday, December 13th, 1806.

This day the sitting of the Special Commission Court closed, the officers of the crown having signified their intention not to proceed with any farther trials.

The Hon. Mr. Baron George took that opportunity of addressing the gentlemen returned upon the petty jury panel. Gentlemen, I find, that we shall have, upon this occasion, no more criminal trials. I think you extremely well deserve the thanks of the public, for the very great propriety with which you have conducted yourselves. You have supported the law, and the law will support you, if you be not wanting to yourselves. I trust, gentlemen, that our proceedings will have the effect of pacifying your disturbed county, and in that hope, the officers of the crown have desisted from further trials. They wish to spare the poor wretches, who are the deluded instruments of outrage, as much as the public peace will allow.

Gentlemen, this court will adjourn—not to a very distant day, and if the peace of this county shall be undisturbed, the court will not sit, until the regular return of the assizes. But if disturbances shall continue—it will be a sad necessity, but to which the government must give way—this Court will sit again, to bring to speedy and condign punishment, those who shall offend against the laws. I trust in God, that the people will listen to good advice and be happy—that they will not be living in the dread of the ministers of the law, and in those terrors with which guilty men are surrounded. Gentlemen, you are dismissed, and you will get due notice, in case it shall be necessary to call you together again.

Martin Early and *John Early* were put to the bar, and asked, what they had to say, why judgment of death should not be awarded against them.

Mr. Baron George.—*Martin Early* and *John Early*; It is a lamentable thing to see two unfortunate men, who, if they had behaved themselves, would enjoy comfort, sent out of the world in an ignominious manner. It is really afflicting to think, how rational beings can be led into such mischief, as it appears

that numbers in this county have been seduced into. If they reflected a moment upon what has happened in their own experience or what they have heard from their fathers, as to the result of such confederacies, they must have been satisfied, that disturbances of this nature have never ended in favour of those who embarked in them: they have brought destruction upon the wretched men and their families—their bodies are thrown into gaol, and they afterwards suffer an ignominious punishment—such are the consequences which invariably follow such crimes. It is lamentable to see, how easy credulous people are led astray from the paths of peace and happiness. I trust, unfortunate men, that your example will have a good effect upon the peace of this county; and that men will return to their honest industry and their peaceful labours. They will then rest easy upon their beds, leading happy lives in the fear and love of God, and in friendship with their fellow-creatures.

Every man must know, that social order and comfort cannot exist, if these deluded *Threshers* were to go unpunished. I trust, that your example will have a good effect, and that such as have erred will reconcile themselves to the magistracy and the law, before it is too late; they should not think themselves bound by those regulations and oaths, which are stated to be forced upon them. Such oaths are not binding in the eye of God, or in the sight of man. The moment they are taken, they should be rejected, and remembered no longer. I trust, that the wretched men, who, in pursuance of such oaths, have been disturbing their neighbours' houses in the night, and taking away arms for rebellious and seditious purposes, will bring them freely to the magistrate, as an earnest that they are returning to their allegiance and their duty, and not deceive themselves any longer. I pray most sincerely, that all who hear me will take this advice, and send it round through the country; that these shocking examples may not be necessary again, but that the country may rest in peace and in tranquillity.

Sentence was then passed in the usual form.

Patrick Hargedan, James Mame, Richard Murphy, and James Clenane were put to the bar.

Mr. Baron George.—You appear to be four unfortunate men, who have been most cruelly abused, by those disturbers of the peace. They appear to have gone to your houses in the night time, and to have sworn you to go forth to violate the laws of the land, and in obedience to that oath, you commit a capital felony. You were tried by a merciful jury, who felt for your situation, and who expressed themselves accordingly. If it is to become a question, whether the laws of the land are to be obeyed, or not,—every man will answer,

that they must be obeyed. It is impossible, that by an act of the *Threshers*, or other misguided persons, obedience to the laws can be renounced. Those who endeavour to persuade you to the contrary, have no regard for your safety; they swear you to do an act, which forfeits your lives, and their oath is no justification of your crime. It must now be known to all ranks in this county, that such a defence cannot prevail. Therefore, if ever it should happen again (which I fervently hope will not), that these deluded miscreants should rise and go to men's houses, and administer oaths to them, let me advise the persons so maltreated, to disregard such oaths. Their clergy, their landlords, and every man of sense knows, that such oaths have no binding force upon them. Let me advise them to go to the next magistrate, and state to him who have imposed this force upon them; give him a description of their persons, and he will be called upon to provide protection for those who shall so approach him, and the strength and arm of the law will be extended, to bring to justice those who offend against it. When disturbers go into a village, the inhabitants should arise, one and all, to resist them and bring them to justice.

You stand in a situation, which it is right should be known by you and by the country. You have been recommended to the lord lieutenant by the gentlemen who tried you. They have interceded for your lives, and I am satisfied their recommendation will have a great effect, if the peace of this country will allow government to extend mercy and spare your lives. But if those profligate and cruel men, shall, in defiance of the law, persist in their outrages, lay your blood at their doors, and blame them for your fate. The recommendation of the gentlemen who tried you, was founded in humanity, and is entitled to great respect. I shall transmit it to the lord lieutenant. I hope it may have a good effect, and that you may be restored to your families; but that event will depend upon the peace of the country remaining undisturbed. In the mean time, it is my duty to pronounce the sentence of the law.

Which his lordship accordingly did.

Mr. Baron *George* then addressed the grand jury: Gentlemen; You have performed your duty in a manner that deserves the thanks of the Court, and which I hope will be beneficial to yourselves and the county. I trust, the sitting of this special commission will be attended with good consequences to your county; and I am satisfied, it will be considered as an act of the greatest kindness to those who may have been involved in crime, but who are yet reclaimable.

Gentlemen, it is of no small importance, that the laws in existence for the punishment of these disturbers, should not only be made familiar to the magistrates, but should also

be made known to the deluded men, who have been in the habit of violating them. It is of great importance, that the people should know the obligations to which they are subject; and that the magistrates should know their legal powers—not hesitating to put them into execution in cases of emergency, by doubting their authority, but enforcing them with firmness and integrity. Any man who seeks popularity from these delinquents, by conniving at their excesses, and glossing over their crimes, ought to be considered as their mortal enemy. The magistrate who boldly steps forward, and gives them good advice, and if they will not listen to it, puts the law early in force against them, is their friend;—he saves themselves from death, and their families from misery. If the people knew the value of such a magistrate, they would highly esteem him.

Gentlemen, I am satisfied, from the propriety of your conduct, that you are of the description which I have last mentioned. You will return home, determined to give efficacy to the laws—not to overlook small offences until they expand into great crimes. Check the mischief in its origin; and while you are so acting, you will feel, that one good man, with the law at his back, is a match for an host of guilty persons, trembling with the fear of punishment.

Gentlemen, it is the intention of the court, not to terminate this special commission altogether, but to adjourn it over to a future day; and if the peace of the county shall not demand more—the victims and sacrifices, now made to the law, will be the only sufferers. But if infatuated men are determined that more of themselves and their accomplices, shall come to an untimely end, this Court will sit again, and farther examples will be made, until tranquillity be completely restored.

Gentlemen, I do not say this to exhort you; because you require no exhortation; but that it may be generally known, that the government, which is the common parent of all the people, is determined to protect all its dutiful children, by the strong arm of its power, and the energy of wholesome laws, and to bring every violator of those laws to condign punishment.

Gentlemen, with these observations, the present proceedings close; and I trust, that all our labours will terminate in the happiness of your county.

The Court was then adjourned to the 12th of January.

CARRICK ON SHANNON, Dec. 15, 1806.

This day Lord Chief Justice *Downes* and Mr. Baron *George* arrived here.

The following grand jury was sworn:

Hen. John Clements, Launcelot Stack,
Sir Hugh Crofton, bt. Cornelius O'Brien,

Matthew Nesbitt,
John Carter,
John Crofton,
Duke Crofton,
Francis Waldron,
Edward Simpson,
Walter Peyton,
Robert Birchall,
Myles Keon,
Hugh O'Brien,

Wm. Stack, jun.
John Birchall,
Alexander Norris,
John Moreton,
James Stack,
John Morgan,
Bury Morris,
Wm. Hamilton,
John Dunn.

The *Lord Chief Justice* delivered a charge to them, nearly to the same effect, as he did to the grand jury at Sligo; but congratulated the gentlemen, that the state of their county did not require a long investigation.

16th December, 1806.

JAS. FERGUSON, MICHAEL GRANT, and JAS. CONNELL, were indicted, for that they, with many others, on the 29th of October, 1806, with force and arms did rise, assemble and appear in arms, at Gortemore, in the county of Leitrim, to the terror of his majesty's subjects, and did assume the name and denomination of *Threshers*; and did wear unusual dresses and badges, to wit, white shirts over their clothes, not being their usual dress upon their lawful occasions, against the peace and statute.

They were also indicted, for that they, not being thereto compelled by inevitable necessity, feloniously did take an oath, importing to bind them to be of a society and confederacy formed to disturb the public peace, that is to say, "that they should keep secret and obey the laws of the *Threshers*, and attend when called upon by them," &c. against the peace and statute.

The prisoners pleaded Not Guilty,

The following jury was sworn:

George Percy,	James Carey,
Wm. Shanley,	Wm. Little,
Edward Lowther,	Richard Connolly,
John Burke,	Robert Armstrong,
Thomas Connolly,	Thomas Little,
Michael Irvin,	Charles Grogan.

Mr. *Solicitor General*.—Gentlemen of the Jury; The prisoners, upon whose trial you are sworn, stand indicted for having assembled unlawfully in arms, assuming a denomination not usually assumed, and wearing a dress not usually worn by his majesty's subjects, upon their lawful occasions. If, upon the evidence, you shall be satisfied of their guilt, the law will call upon the Court to inflict such punishment of fine, imprisonment, pillory, or corporal suffering, as in the discretion of their lordships they shall think adequate to such a high misdemeanor:—They also stand indicted, for having voluntarily taken unlawful oaths, binding them to the wicked and profligate association, that has infested this county. This is a more serious charge; the law has declared it to be a trans-

portable felony: and if you shall be of opinion that the prisoners are guilty of it, those unfortunate men must expiate the offence by banishment from their native land, for the remainder of their lives: to the commission of this latter crime, it is necessary that the oath should be voluntarily taken. If such an oath is by compulsion forced upon any man, the law, provided that in a certain time he informs a magistrate of the fact, is too reasonable to consider him a criminal; but, in the case now before you, if my instructions have not deceived me, no such defence can be set up. The misdemeanor with which the prisoners are charged, if they are guilty of it, takes away all excuse from the felony of which they are accused; and you will find by the evidence, that they were apprehended in arms, arrayed against the laws and peace of their country, and conducting themselves in such a manner, as shows them to have been active and willing members of the confederacy to which they belonged: I shall not attempt to prejudice your minds, by anticipating the evidence; I shall only say, that if you shall be satisfied of the guilt of the prisoners, the public safety calls loudly for example and punishment.

That so few persons should, in this county, be accused of the crimes connected with the present insurrection, is a subject of congratulation to you, and of much satisfaction, and some surprise to us: when I consider the various rumours which were circulated, and remember the many complaints that were made of the state of this county, I can scarcely account for the appearance of your gaol and your calendar: I will not suppose, that the representations made upon the subject, from respectable quarters, have been exaggerated: I will not suppose that your magistracy have been supine and negligent in the discharge of their duties: I will rather believe, that mistake and ignorance have prevailed as to the nature of those offences, and of the laws in force against them; and I am the more disposed to think so, because it is certain that considerable pains have been taken to circulate an opinion, that the laws against tumultuous assemblies had expired, and that the magistrates had no legal power to resist the disturbers of the public peace.

The prevalence of this error, the extraordinary credit which such a misrepresentation has obtained, and its obvious tendency to encourage the commission of crime, and to check the exertions of the loyal and well affected men, not only justifies me, but calls upon me to solicit the attention of the public in this respectable county, to a short statement of the nature of those laws which are in full force, for the punishment of the guilty, and the preservation of the public tranquillity.

The legislature, judging wisely of the nature of popular insurrection, has provided that the mere act of unlawfully assembling,

shall be a high misdemeanor, punishable at the discretion of the Court. It has provided, that merely submitting voluntarily to take an oath or engagement, binding the taker to the illegal confederacy, shall be a transportable felony; but for every offence, implying an active participation in the views of a tumultuous association, there is but one punishment, and that is, death. Whoever compels another to belong to such a society—whoever invades the property, or assaults the habitation of another, in furtherance of the objects of such a combination—whoever procures, levies, or supplies money, arms, ammunition, instruments of torture, or any other means for their purposes—whoever abets, succours, or conceals any of the confederates—whoever spreads their false alarms, delivers their threatening letters, or spreads their system of terror, by circulating their messages—whoever administers any of their unlawful oaths or engagements—whoever excites others to engage in their confederacy, subjects himself to the highest of human punishments, and upon conviction of any of those offences, is condemned to suffer death as a felon, without benefit of clergy.

The laws also, in the dreadful emergency of commotion, invest the magistracy of the country with powers proportioned to the nature of the public danger: all magistrates are bound to apprehend, disperse, resist and oppose all persons engaged in any of those offences: to enable them to do so, they are authorised to call upon and command all his majesty's subjects of sufficient age and ability, to assist them. If the persons who have illegally assembled, after having been duly called upon to disperse, shall, to the number of twelve, continue and remain so assembled, they become guilty of a capital felony, and upon conviction, shall suffer death. If force be necessary for their dispersion, the magistrate is authorised to resort to it in the most summary and effectual manner; and if in the apprehending, dispersing, resisting, or opposing any such offenders (I use the words of the statute) any person or persons shall happen to be killed, maimed or hurt, the magistrate, and all persons who acted in his assistance, shall stand freed, discharged, and indemnified for the same: these severe, but necessary laws, put the infatuated and criminal insurgents into a state of war with every loyal subject; when assembled, they are exposed, in the first instance, to be opposed and dealt with as public enemies—the mere act of association subjects them to discretionary punishment—the mere engagement to belong to the association, to banishment for life; but every active step beyond that, which can be possibly taken in promotion of the confederacy, once formed, is a step towards death:—capital punishment is the dreadful and common punishment of every such offence.

This code of laws is peculiar to this country, and is only called into operation, in sea-

sons of public tumult and disturbance; the experience of many years, is at once a melancholy attestation of its necessity, and a convincing proof of its efficacy. Illegal association, and tumultuous insurrection, seem to be the particular mischief of this land; but there is no instance (where an open rebellion has not raged) in which those laws have not been found adequate to the suppression of the evil.

It is but just to call them severe, but it is also just to call them merciful; they proceed upon that soundest of principles, the prevention of crime, and upon the known tendency of unlawful associations to produce it: in the case of individuals the progress from one offence to another is easy, but in the case of associated criminals it is rapid—the very nature of unlawful association is, to enflame the passions of one man by the passions of another, and to bring into general action the collected vices of many. The man whose own temptations or frailty would be insufficient to urge him onward in the career of guilt, whose own reason or compunction might arrest his progress, is borne along with the torrent—bad example decides him—false shame hardens him, and he is precipitated, scarcely voluntarily, and almost necessarily, into the commission of every crime.

It is therefore, a humane as well as a wise system of laws, which denounces the highest punishment against every offence of whatever character which from its nature is likely to lead to the higher and most aggravated enormities: its evidence is exemplified by the history and progress of these mischievous associations; some base and cowardly incendiary, afraid to show himself, spreads amongst the ignorant and deluded multitude the spirit of discontent. The humility of the condition of the lower orders is represented as a grievance—every inconvenience of which they can complain, is represented as an abuse—their ignorance is played upon, their passions are fired, they are taught to confederate, and the solemnity of an oath is profaned in order to bind them to each other for the pretended purpose of redressing their wrongs. Their association is feeble, without money and arms: plunder, midnight plunder, the invasion of the honest man's peaceful dwelling, becomes necessary to their progress. Rapine and violence thus become familiar, every loyal man becomes their enemy—fear makes them cruel and vindictive, and torture and assassination are the base and ready instruments of confederated and guilty ruffians. Thus every moral principle is rapidly extinguished, every sense of obligation is lost, that consummation and vice to which an individual gradually habituates himself a conspirator arrives at speedily, sometimes instantaneously, and the unfortunate and deluded wretch who perhaps in the morning associates with others, as he is taught to believe for the redress of grievances and the reformation of abuses, before

the evening sun has set upon him is involved in the complicated guilt of robbery and murder, covered with crimes and stained with blood.

The experience of this special commission in other counties where the evil has been more extensive than in this, warrants this picture; but every man of sagacity must perceive that there is a further view of those associations—possibly in their origin unconnected with any principle of political combination, it is easy to see, that if not put down, they may become ready and formidable materials in the hands of the secret traitor and the public enemy, who never fail to avail themselves of every favourable opportunity.

That our misguided peasantry should be so corrupted and depraved, and that it should become necessary to call into operation against them the sanction of laws so penal, must be a subject of deep regret to every reflecting and humane man. How such infatuation should prevail even amongst the most ignorant of the community, it is hard to account for: perhaps nothing has so much contributed to produce such an effect as that which the present prosecution brings particularly under our observation, the abuse and profanation of the solemnity of an oath. That an oath imposed by force, or binding the person who takes it to the commission of a crime should constitute any obligation whatsoever, implies an absurdity which one would suppose must shock the understanding of the most barbarous and ignorant savages; yet we find, that under this miserable delusion, in every instance of popular insurrection, our wretched people are led on by the incendiaries who seduce them, from one offence to another, and engage in the commission of every crime which afflicts society, because they have sworn fidelity to the association in which they are engaged: they make war upon their fellow subjects, they plunder their properties, they invade their peace, they degrade human nature by the savage practice of torture, and finally they commit murder, thinking that by the solemnity of an oath they can have pledged themselves to God to violate all his commandments. They cannot think so, no creature possessing the reason of a man, be he ever so ignorant or uncivilized, could entertain so monstrous an opinion, if he reflected for one moment—the wicked men, who make instruments of such wretches must pervert their understanding as well as deprave their morals, before they can make the human intellect even in its most uneducated state, submit to such an imposition. A man who meditates a crime, is well aware of the guilt which he is about to incur, but he must be infatuated indeed, if he conceives that he can diminish that guilt by swearing that he will commit it. He must be dead to every moral sentiment if he does not perceive that he

aggravates his offence, by presuming to invoke the God of truth and purity to witness that blasphemous engagement by which he binds himself to outrage all laws human and divine. How much more absurd is it to imagine, that such an obligation can bind, when it is imposed by force, and when an unfortunate wretch submits to it at the peril of his life! To take such an obligation under such dreadful necessity is no offence—the law excuses it if atoned for by a speedy and an effectual confession; but the crime consists in the keeping of an oath so taken, a crime pointed out as explicitly by the common understanding of mankind, as it is denounced by the express laws of the country: I cannot but doubt that any intellect is gross enough to be abused by such a notion as that those oaths are binding; I rather suspect that the mind in such cases submits willingly to a deception of which it is conscious, and practises a fraud upon itself. Let the most ignorant peasant in this country be asked this question? If a ruffian with a dagger at your heart, compels you to swear that you will on the following day burn your own house, murder the friend whom you esteem, the wife whom you love, or the children of your blood; would you keep that oath? If he compelled you to swear that you would commit suicide and put an end to your own existence; would you keep that oath? There is no ignorance so brutal as to hesitate about the answer: and yet it is supposed, that these guilty and profligate men conceive that the oaths, which either willingly, or upon compulsion they take, call upon them for obedience to all the ordinances of captain *Thresher*, or any other ruffian who thinks proper to impose those obligations, even though the observance of his laws implies the violation of every moral duty. This abominable and ridiculous system cannot be submitted to: if it be ignorance, it must be disabused—if it be wickedness, it must be punished. Neither can be done with this incorrigible people, except by the laws speaking by their severest sanctions: let it then be known that by those laws, whoever administers an oath binding another to belong to an unlawful society, or any other illegal oath, must suffer death; and whoever takes it willingly must be transported into a foreign and a barbarous land, torn from his home, his family and his friends and condemned to miserable banishment for the remainder of his life. Let it be further known, that the same dreadful punishment must fall even upon him who takes such an oath under compulsion, unless in ten days afterwards he gives information to a magistrate of all the circumstances relating to his taking it, and discloses the names of those who administered such oath, and of all those who were present at the administering of it.

Gentlemen of the jury, I have thought it necessary to offer to your consideration those

observations upon the nature of the laws in force against tumultuous and unlawful assemblies. You see that they are fully adequate to your protection, if carried into execution with vigour and fidelity. Your magistracy are invested with abundant power to resist the progress of insurrection and to bring offenders to justice, if they are disposed to do their duty. The government of the country has been vigilant over its interests, and by the issuing of this special commission has enabled you without waiting for the ordinary period of the assizes to inspire the wholesome terror of the law, by prompt and speedy example. It only remains that you, as jurors, should perform your important duty, without favour or affection, acquitting the innocent and convicting the guilty, fearless of all consequences and only mindful of the solemn obligation by which you are bound. Be assured that if honest and loyal men co-operate with the government—if your magistracy are active, your gentry vigilant, and your jurors honest,—there will be no difficulty in putting down this contemptible and yet profligate and atrocious insurrection, and in putting it down by the sole force of those laws against which it has ventured to raise its audacious head.

I cannot and will not doubt, that the gentlemen of the country will in their respective departments discharge their several duties—I will not suffer myself to believe that a base and unworthy panic excited by those despicable miscreants, the lowest and vilest of the community, shall be found influencing any man of character to the dereliction of his duty. Fear, under such circumstances, must be as irrational as it would be contemptible; the facts which will be disclosed to you upon the present trial will demonstrate that the wretches who affect to establish the reign of terror amongst you are panic struck, whenever an honest man confronts them: in cowardly and midnight assassination they show themselves, but whenever the loyal and the brave look them in the face they fly in dismay.

Still less will I allow myself to think that there exists any sympathy with the professed objects of the insurgents, or that any man in the rank of a gentleman can be so infatuated, as to suppose that this banditti is to be connived at, because they have affected to confine their hostility to the clergy, and to tithes. It is easy to raise a clamour against the institution of tithes, or any other establishment, but let it be remembered that if the mob of the country is allowed to regulate any one species of property, it will not be easy to prevent them from exercising the same authority over any other, and if the laity shall look with indifference upon the plunder of the clergy, they must reflect that rents will be soon subjected to the same species of popular reformation. Let every well-judging man remember, that the establishment of religion is necessary to the well-being of society, that

such establishment cannot be supported unless the pastors of religion are maintained, that by the constitution of this country, the title of the clergyman to his tithes is exactly the same as that of any gentleman to his estate, and that the same laws protect both: let it be also remembered, that the complaints of the people as far as they seek an abolition of tithes, are idle and absurd: it is not the man, but the land that is subject to tithes. Every man who purchases an estate purchases subject to the tithe estate of the clergyman in the lands—every heir inherits subject to the same—every tenant takes his lease subject in the same manner, and if tithes were abolished to-morrow, the value of lands would rise proportionably to the landlord, and the amount of rent would be in the same proportion increased against the tenant. As to the mode of collecting tithes, it may possibly in some instances be exceptionable. I will suppose that it is so, for a moment, without knowing how the fact is, but will any man of ordinary understanding, commit the regulation of such a matter to captain *Thresher*? Whenever a grievance exists, there are legitimate and constitutional modes of complaint, but the constitution, the law, and reason forbid, that the reformation of pretended or real abuses shall be entrusted to a savage and infatuated peasantry, let loose upon society, freed from all the restraints which education imposes, defying all laws, and enforcing their assumed authority by the plunder and destruction of property, and the torture and murder of their fellow-creatures: the same remarks apply to all other pretended causes of popular discontent—all the dearest rights of society are interested in preventing mobs from becoming legislators. In that spirit are framed those wise laws against tumultuous assemblies, which you, gentlemen of the jury, are now called upon to carry into execution. I am satisfied, that you will discharge your high duty, faithfully and conscientiously, and be assured, that if every man does his duty, there is nothing to fear.

Richard Irwin, esq. sworn.—Examined by Mr. Attorney General.

Are you a magistrate of this county?—Yes, sir.

Have you resided in this county for the last five or six months?—I have, and for many years.

Have you had any opportunity of being acquainted with the nature and progress of the disturbances in this county?—I have.

Mention what has been the nature of them?—People have appeared in all parts of the parish about me, in arms at night, dressed with white shirts over their clothes, going to the inhabitants, and swearing them to what they call the *Thresher's oath*.

What is that?—To keep secret; to attend when called upon; to observe the *Threshers laws*; not to pay tithes but to the rector, and to pay only certain fees to their own clergy.

Have they administered oaths?—So I have understood, and it is so generally reported.

Have they taken arms?—Not immediately about me.

Did you fall in with any of these disturbers at any time?—I got information on the 29th of October, between twelve and one at night, that a party of *Threshers* were marching in great force from the parish of Clonee, and were coming to the parish of Carnygallan, where they had not before appeared, and were swearing all the people as they went along. In consequence of this information, I directed the permanent serjeant, who brought me the intelligence, to collect as many men as he could get, and that I would be with him, as soon as I could put on my clothes. I then went out, accompanied by a gentleman who was in the house with me, and some of my servants.

Did you come up with any party, and at what time?—I pressed forward with twelve or thirteen men, to the place where I heard these people were to assemble, and traced them from house to house, where I understood they were swearing the people, until we came to the lands of Gortemore, in the parish of Carnygallen; one of the men said he saw the *Threshers*; it was a light night, and I saw such a body in white, that it appeared like a stream of water, till they filed off at a turn in the road.

Were they armed?—They were; I saw two guns, and a number of pitchforks, shovels, and other weapons.

What happened?—They stopped at the house of William Costello.

What number of them?—About one hundred and fifty.

What was done then?—At Costello's house they called in a manner of which I did not conceive the meaning; then they gave a shout or huzza, which appeared as if to encourage the party.

What did you do?—I fired upon them immediately.

Did they remain, and give battle?—No; they ran in all directions; we were coming down a hill, and I believe our shots did not take effect. We ran forward, but not being able to run as fast as the rest, and finding there was no opposition, I stopped on the ground where the *Threshers* had been, and I picked up pikes, shovels, forks, and shirts.

Did you take any of that party?—We did; these three men at the bar were taken.

Were they in any particular dress?—Grant and Connell had their shirts over their clothes, when I saw them. Ferguson had not any particular dress; he was taken in a bog hole, by a man of the corps, named Ferguson, who is a relation of the prisoner.

Did they say any thing when they were brought to you?—They did: they confessed they had been sworn *Threshers*.

Did you give them any encouragement or hold out any threat, to induce them to make

a confession?—I did not; I kept them at a little distance and interrogated them. They all said they took the *Threshers'* oath, but each man justified himself by saying he was forced. I asked them, why they went out with white shirts? they said, they were forced to go out.

Did they say who were of the party?—They said they did not know any of the party who brought them out that night; that they were all strangers.

Did any of them mention the nature of the oath?—I asked Ferguson, for I had most dependence upon him, to tell the truth. He said, he was forced to swear to keep the laws, to go out when called upon, to keep secret, not to prosecute a *thresher*, and not to pay tithes but to the rector. As to the priest's dues he was not particular, being a Protestant.

Had you any conversation with respect to their weapons?—I had; my men were finding fault with them. Grant acknowledged he had a *grape shaft*, it is a fork with three grains. Connell said he had a fork, and I brought him one, which he said was not his, and another being brought, he acknowledged it was his.

Was any thing said about shirts?—Grant and Connell had their shirts upon them; and when Ferguson was brought, I asked him, where his shirt was, and it was found in his pocket wet and dirty.

Richard Irwin, esq. cross-examined by
Mr. Keon.

At what time was this?—Between three and four o'clock.

Did they disperse immediately upon your firing?—They did, in all directions.

Had you any reason to believe their shirts were on them, at the time they were taken?—One of the men told me, they had not their shirts on when they were taken, but being found in their pockets, my men put them on.

They said, they were compelled by force to take the oath?—They did.

Did they all say so?—They all said the same thing.

Did they say at what time?—They said, they were compelled several days before, and that the party who swore them, came to them that night, and took them out with them.

Did you not know Ferguson to be a loyal man?—I did for some time before.

Court.—You say you did not hold out any hope; if you did not, how came they to mention any thing to you?—They conceived, that saying they were forced would save them from prosecution.

Mr. Keon.—Then they were in terror?—No, save being in custody; they were not put in terror by me: they considered they could not be prosecuted, alleging that what they did was by force.

Have you any reason to think, that your men used force to them, to make them confess?—I have not.

Edward Gallagher sworn.—Examined by
Mr. Sergeant *Moore*.

Are you a yeoman?—Yes.

In what corps?—In the Carnygallen corps.

Were you out in the month of October last, with Mr. Irwin?—I was.

When was it?—I do not accurately remember the night; I was out with him the night these men were taken. We went in search of those people, called *Threshers*. We came up with them at Gortenmore, at William Costello's house.

Did your party fire upon them?—We did.

Were there many?—A great number.

What hour was it?—We left home about one o'clock, and had gone about two miles and a half.

What was the effect of the fire?—They ran at the first or second fire.

Did you pursue any of them?—I did; I pursued them and was the most speedy.

Did you come up with any of them?—I did.

How many?—Two.

Did you take them?—I did; these two, Connell and Grant.

How far did you run from the time they broke, until you took them?—Not very far, only a small angle of a bog; it was not near a quarter of a mile.

Had they any thing in their hands?—They had; one had a fork, and the other had a grape handle. As I ran, my waistcoat flew open and my shirt appeared, upon which they came up to me. They did not consider me to be one of the enemy, but thought I was one of themselves. I desired them to stand, in the king's name, or I would shoot them. Upon which, they said they were unfortunate, as they did not know we were so near, or they might have escaped.

Had they any thing on their hats, or over their clothes?—They had not; but when I took the second man, I called out to the rest of our party for assistance, and upon their coming up we searched these men, and found shirts in their pockets.

Did you see any other shirts?—I did, upon the party who ran away.

Did you see any others?—I did, in the bog next morning; we found several there.—Did these men say what they were?—They said, they were forced from home by a body of the *Threshers*.

Then they admitted, they were out with the party?—They did.

Edward Gallagher cross-examined by
Mr. Keon.

This was a moon-light night?—It was.

How near were you to the party when you fired?—I cannot say; we were within shot.

They ran a quarter of a mile?—Not quite.

They ran very fast?—As fast as they could.

How long should you be going that distance?—About five minutes.

These two men turned back towards you?—They did.

What reason have you for supposing, that your shirt caused them to turn back?—I have a reason for supposing, that they did not know me; but seeing my shirt open and exposed, they thought I was one of themselves.

Had they time to take off their shirts and put them in their pockets, if they had them on when you fired?—It is possible they might.

Is it more than possible?—I cannot say.

Could you do it in that space of time?—It is possible I could.

You do not know, whether these men belonged to the body or not?—I cannot swear to that.

Do you not suppose they were greatly frightened and bewildered, not perfectly in their senses, nor as cool as if they had not been taken?—Very likely they were not.

Did you threaten to do them any harm?—I did not.

A Juror.—You say you lost sight of them?—I did.

Do you think it possible, they could have taken off their shirts while they were out of your sight?—They might.

Ephraim Gilhooly sworn.—Examined by
Mr. Webber.

Are you a yeoman?—Yes, sir.

In whose corps?—In captain Irwin's.

Do you recollect being upon service on the 29th of October last?—I do.

Upon what service?—He brought me out along with him, to suppress a meeting of these *Threshers*, who were gathering.

Where did you go to?—To Gortenmore, where we came up with a body of men, whom I saw very plain.

Was any thing particular in their dress?—There was; they appeared in white.

What number were there?—They appeared as long as a corps of yeomanry.

What was done?—We got orders to fire.

Did you fire?—We did.

What happened?—They retreated; they ran away.

What did you do?—I pursued with the rest of my company? and there were two taken by Gallagher.

Did you see any other?—I did; I saw the prisoner Ferguson.

Where did you see him?—I saw the appearance of a man, lying on his mouth and nose upon a shaking scraw, in dark clothes, and his hat off; upon seeing him, I said, "Boys, here is one man pinned." He raised himself with a grape, and I pointed my piece at him, and said, I would blow his brains out; he dropped the grape, and corporal Ferguson, coming up, asked, was that James Ferguson? he answered, it was.

What was done with him?—He was brought to the captain.

Point him out?—This is the man. [Pointing to the prisoner, James Ferguson.]

Was there a shirt upon him?—He had not a shirt over him; but he had one with him, which was wet and dirty.

Richard Irwin, esq. examined again.

Did you see any shirt with the prisoner, Ferguson?—I understand that corporal Ferguson, being a relation of the prisoner, permitted him to put up his shirt; I made him take it out of his pocket; it was wet and dirty, and I made him put it on.

Ephraim Gilhooly cross-examined by *Mr. Keon*.

You did not take any of these men yourself?—No: upon my return I saw those two men with Gallagher.

They had no shirts upon them at that time?—No.

Nor had Ferguson as you saw, for he appeared in dark clothes?—He had not.

Were you the first that saw him?—I was: the other men passed him; but taking notice of him, I went close to him, and discovered him.

Did you continue with him, until he was given to the captain?—I did.

Are you certain he had a grape handle in his hand?—He had, or a stake like it.

Serjeant Wood sworn.—Examined by *Mr. Attorney General*.

Are you a yeoman?—Yes, sir.

Were you out this night, which has been spoken of, with captain Irwin?—I was.

Do you know the prisoner, Grant?—I do: he was in custody of Gallagher, when I came up; but I was pretty convenient to him.

You mean close to him?—I do.

Was he searched?—They were both searched; one man had a shirt under his arm, the other had a shirt in his pocket. It was Grant, I think, who had the shirt under his arm.

Serjeant Wood cross-examined by *Mr. Keon*.

You were not the first who came up?—I was not: Gallagher had made them prisoners.

And you cannot swear, that they had those shirts in the manner you mention, at the time they were taken?—I cannot.

Nor that you saw them among the party you fired upon?—Not to know them; the party ran, and we pursued them.

DEFENCE.

Margaret M'Dowell sworn.—Examined by *Mr. Keon*.

Do you recollect the 29th of October last?—I recollect the night, when Ferguson was taken.

Did you see him that night?—I did.

Upon what occasion?—There was a woman in my house, a sort of a midwife, and he wanted this woman to go to his wife, who was not well, to keep company with her, that he might the better stay away; the woman

was not fit to go out, by reason of having got a cold, attending another woman some few nights before.

How long was he in your house?—He was in it from the time he came, till about ten.

Did he say any thing?—My man desired him to stay a little longer; but he said it would be unkind to stay away longer. But he would not go with these *Threshers*, if they tore him off his horse; and he was always talking against them.

Margaret M'Dowell cross-examined by *Mr. Attorney General*.

You have known Ferguson a long time?—I have.

He was talking very often against those *Threshers*?—He was.

And regretted much that they swore him?—He was always angry at them.

How long have they been in the country?—I cannot say; the report of them was in the country long enough.

Did you ever hear him say, they had sworn him?—I did not.

He kept that a secret from you?—He never told me; but said, he would not go among them. He said he would not walk with them.

Had he a shirt in his pocket?—He had not; but had one upon him.

Did you search his pocket?—I did not; but he was with me all day, beetling flax.

Did he dine with you?—No, he went home to dinner, and came back to finish.

How do you know he had no shirt in his pocket?—Because his coat was off.

And therefore he had nothing in his pocket?—To be sure.

And he came back at ten o'clock at night; was that to beetle flax? Had the *Threshers* been out that night before he left you?—No.

Had you heard they were to be out?—It was a common report they were.

Whom did you hear say it?—I cannot say, there were so many said it.

Did Ferguson say they were to be out?—He did; but he came to shun them.

Did he say, he was shunning them, because he heard they were to be out?—He did not; but said he wanted to get away, as it was ungrateful to his wife to stay so long from her.

He told you that, having first said he came to shun them?—He did.

He wanted the midwife to go to his house?—He did.

And his wife was afraid of being alone?—She had a labour upon her at the time.

When was she brought to bed?—In a few days after.

Did you ever see any of these *Threshers*?—I never did: I would go into an auger hole to avoid them.

It is generally late at night, that these people go about, and force innocent people out of their beds?—It is, sir.

Between eleven and twelve, and one in the morning?—I do not know at what time they begin.

Was not ten o'clock the most likely time for the *Threshers* to begin their diversions?—I do not know.

Did you hear of the bog where the prisoner was taken?—I did.

How far is that from his house?—Two mile.

Did he go there to avoid the *Threshers*?—No. He went there for a woman for his wife.

What is the name of the woman who lives in the bog-hole?—I can't tell.

Was it to get a woman for his wife, or to hide from the *Threshers*, that he went to the bog?—I will take no oath about that.

Did he take a shirt in his pocket to keep the midwife warm, as she came along; and a shaft in his hand to knock her down, if she refused?

[Witness would not answer.]

Jurymen.—How far is your house from Ferguson's?—Not far.

Is it within hearing?—It is within call.

Could a great crowd of *Threshers* have come to his house without your knowing it?—There might.

Would they have passed by your house?—He is an innocent man, and they never call for him, because he is not fit for their purpose.

Did you hear of their being about you that night?—I heard them going through the hills.

Court.—Were they near you?—No.

How near were they to you?—Within a call of us.

Did you see them?—No: I heard their shouts.

Arthur M'Clean sworn.—Examined by Mr. Keon.

Do you know James Ferguson?—I do.

Did you see him on the 29th of October?—He came to my house late in the evening of the night he was taken.

For what purpose?—He came to strive to shun that party.

Did he make any declaration that he so intended?—He did.

What did he say?—He told me he was afraid to be caught by them, as he went out in order to secure his cattle.

At what time?—About night-fall.

How long did he stay with you?—Not long; for he went to settle his cattle, before the night fall. I thought he would have come back; but he was caught by these people.

Did you see any more of him?—No.

A Juror.—Were you not afraid they would have caught yourself?—I kept out of their way.

Arthur M'Clean cross-examined by Mr. Solicitor General.

You say he came to you about night-fall; how long did he remain?—About twenty minutes.

Then he was twenty minutes with you, hiding from the *Threshers*?—Yes.

Court.—Was he hiding?—He was striving to leave their way.

Mr. Solicitor General.—What reason have you to know that?—I was hiding myself from them, and he came to stay with me.

How far is your house from his?—About 100 yards.

Was his wife sick at your house?—No.

Had you seen him in the morning of that day?—I had.

What was he doing?—He was drying flax at M'Dowell's.

Did he dine there?—I can't tell.

Did he go there in the evening?—I can't say.

Did you hear the *Threshers* that night?—I did.

How long after Ferguson left you?—It was an hour.

Ferguson did not like them?—He did not; he always said so.

He regretted he was sworn?—No, not to me.

Did he tell you he was sworn?—He did.

How long was that before he was taken?—I can't tell.

Was it six weeks?—No, about a fortnight.

How long had he been sworn before he told you?—Two days.

Does not captain Irwin live in that neighbourhood?—He does.

What relation are you to the prisoner Ferguson?—I am his brother-in-law.

[The other two prisoners did not call any witnesses.]

Defence closed.

SUMMING UP.

Lord Chief Justice *Downes*.—(after stating the indictments) In support of these charges, several witnesses have been examined, and their evidence is strong to show the jury, that the prisoners were of the party illegally and tumultuously assembled—the prisoners are taken recently after the dispersion of the party, and Ferguson was lying on his face concealing himself.—The circumstance of the shirts is unaccounted for by the prisoners, and gentlemen, you will determine, whether they had them for any purpose, but that of being out with the party.

But it does not rest upon this; for each of the prisoners acknowledged to Mr. Irwin, that he had taken the *Threshers* oath, and that they were of the party, but they alleged they were forced. With regard to that defence, when a man attempts to excuse a criminal act upon the plea of force, it is incumbent

upon him to make out that case by clear and satisfactory evidence. The criminal act is clearly proved, and there ought to be evidence equally clear and satisfactory to show, that force was operating upon him. There is no evidence produced by two of the prisoners at all tending that way.—Ferguson has examined two witnesses to establish the fact, (Here his lordship stated their evidence.) The prisoner is seen by the witnesses in the evening, and at ten o'clock, and he is taken about three in the morning:—he declared he was afraid of the *Threshers*, but you will determine whether he did any rational act to keep out of their way. But it appears upon the cross-examination of Arthur M'Clean, that Ferguson was sworn—but he did not state in what manner he was sworn. Therefore, gentlemen, you will determine, whether this evidence can furnish any reasonable ground of defence. When a man sets up the defence of force, he admits the fact charged against him, and the defence of force ought to be clearly proved. You will judge, whether Ferguson was out that night in consequence of force operating upon him, for even supposing force to have been used upon a former occasion, that will not excuse him for joining the party on that night. Force can only excuse by its continuance, and unless you think he was there that night by force, the first indictment is maintained.

With regard to the others for taking the oath, the evidence depends upon the testimony of Mr. Irwin, supported with respect to Ferguson, by the admission of one of the witnesses in the defence. Mr. Irwin was interrogated, whether he had held out any hopes to the prisoners or excited their fears to induce them to confess, for a confession so obtained could not be received in evidence.—You heard his answer, and to apply the evidence against the prisoners, you must believe, that the confession was voluntarily, and if you are satisfied of that, you will next determine, whether the oath was of that nature which is stated in the indictment, importing to bind them to be of the Society of *Threshers*;—the evidence is submitted to your consideration and you will decide whether the prisoners are guilty of all or any, and which of the charges contained in the several indictments.

The Jury retired, and in ten minutes returned a verdict, GUILTY, upon all the indictments.

Wednesday, December 17th, 1806.

JAMES DONNELLY, a sheriff's bailiff, was arraigned upon an indictment charging him with delivering threatening messages from the *Threshers* to the persons summoned to attend the juries at this special commission.—He pleaded not guilty, and it appearing upon the evidence, that the prisoner had no

criminal intention, but was speaking merely in jest, the prosecution was relinquished and he was acquitted.

James Ferguson, Michael Grant, and James Connell, were called up for judgment.

Lord Chief Justice Downes.—You have all of you been convicted of taking an oath to bind you to a lawless, criminal, and most atrocious banditti, who have disturbed the peace of this country. Men, who have conducted themselves as you appear to have done—who have deserted the industry by which you could have maintained yourselves and your families, and who are wicked enough to bind themselves by a prophane oath, to obey the lawless commands of others, whoever they shall be—have made themselves too dangerous to remain in the country a moment longer.—You will, each of you, be transported for your lives, and the country which you and your associates have infested, will be relieved from the presence of men, capable of such abominable wickedness, as to bind yourselves by an oath to commit any atrocity whatever which you may be desired by a confederate to commit. Therefore when the public hear, that you are sent from your friends and families never to return, and any man asks the reason of it, let him be told, that it is for taking the Threshers oath, and he will be satisfied, that the punishment does not exceed the criminality of the act. Every man will feel a conviction, that those who bind themselves by an oath to disturb society, make war upon their peaceable neighbours.—They assemble in crowds for the destruction of the property of their unoffending countrymen.—Every man must feel, that the just punishment of such an offender is, to remove him from the country, which he has made unhappy.—Such is your fate, and I hope your example will show, that no man can violate the public peace or enter into these confederacies with impunity. The mere act of confederation is productive of so much mischief, that it alone is sufficient ground for supporting the sentence which removes you from the country, for ever.—You must be transported for life.

LONGFORD.

The judges opened their commission on the 18th of December, 1806, and on the 19th the following grand jury was sworn:

Sir Thos. Fetherston,	Ralph Lennon
Hon. Wm. Moore,	I. R. Robinson,
Rd. L. Edgeworth,	Mat. Crawford,
Richard Fox,	Thos. Lennon,
Samuel Ahmuty,	Robert Jessop,
John Fetherston,	Ahmuty Richardson,
Wm. Thompson,	Thomas Bond,
Henry Montford,	John Batley,
John Bell,	Edward O'Reilly,
Wm. Bond,	Samuel Crawford,
Geo. R. Fetherston,	Arthur Richardson.

Mr. Baron *George* addressed the grand jury, in a charge containing the same topics, as delivered to the grand jury at Castlebar.

THOMAS FITZSIMONS, PATRICK COYLE, farmer, JAMES KILBRIDE, and PATRICK COYLE, labourer, were indicted, for that they on the 20th of November, 1806, did assume the denomination of *Threshers*, and under that name did rise, assemble and appear by night, armed, to the terror of his majesty's subjects—against peace and statute. There was a second count, charging, that they being armed, tumultuously did rise, assemble and appear, to the terror of the king's subjects. And a third count, that they wore a particular badge, to wit, straw round their heads, with straw caps, and so wearing such badge, tumultuously did rise, assemble and appear by night, &c. against peace and statute.

The prisoners pleaded, Not Guilty, and the following jury was sworn:

W. B. Montford,	Andrew Bell,
James Gregg,	John Bickerstaff,
Richard Webb,	J. A. Goldsbury,
Alexander Kingston,	Daniel Murray,
Thomas Coates,	James Wright,
Andrew Clogher,	Newcom. Armstrong.

Mr. Sergeant *Moore*.—My Lords, and Gentlemen of the jury; in the prosecution of the proceedings under this special commission, his majesty's attorney general, whilst he has spared himself no labour, has very liberally participated with his learned friends, the important duty of making the opening statement in the several cases that have been brought forward for trial; and in this arrangement, it devolves upon me to state the particulars of the present case,—the general nature of the offences with which the prisoners are charged, and the general principles of the statutes, which have been from time to time enacted for their suppression and punishment. And, gentlemen, I regret the less that this duty has been assigned to me, when I consider to what an inconsiderable extent the mischief has existed in this country, and the early and zealous disposition manifested by all classes to resist it, in the first instance. If indeed it were otherwise,—if the mischief complained of had made a more extensive progress amongst you, than it has—if there were any thing that required the exercise of extraordinary ability and judgment, I should lament, that in the discharge of our alternate functions, it should have fallen to my lot, to preclude the county from the advantage of the great talents which my right honourable and learned friend so eminently possesses.

Gentlemen, it is right, and must be satisfactory to you, that I should shortly state, not what merely relates to this particular case and your particular county, but what my experience and observation of this confederacy has been in other places, where its delusions

and its mischiefs have been more extensively diffused; and, gentlemen, it seems to me, that its general character is that of an association, certainly of very wicked and evil designing persons, but not of any rank or influence in the community; and what must be a consolation to the mind of every good subject, not, as I conceive, partaking of any political complexion, or confined to any particular party or persuasion of people. Their professed object is that of regulating the payment of tithes, and certain dues customarily taken by the clergymen of the Roman Catholic persuasion, and the rates and prices of manual and manufacturing labour. These appear at least to be their professed objects; and the great instruments by which they seek to attain their ends, seem to me to be,—alternate terror and delusion—hope and fear—vain and wicked promises—daring and atrocious threats,—amplified and false reports of the numbers, and strength, and success of the association,—of the benefits which they profess to achieve, and of the grievances which they pretend to redress.

With regard to terror and compulsion, the mean excuses of the timid and half-inclined, I am happy to say, for the honor of the country in general, that they have had very little influence in forwarding this wicked association—in your county none whatever; indeed if the law were silent upon the subject, the truly brave man would find the principles which ought to govern his honor and direct his duties, written in his own heart. He would find, that the degree of force which ought to influence a firm and courageous mind, should be immediate and irresistible,—not admitting of the means of repulsion or resistance; of any interval for escape or parley; of any opportunity for evasion, or avoidance. Gentlemen, after what you have heard so fully and ably explained from the bench, upon the subject of compulsion and inevitable necessity, as constituting a defence for entering into unlawful engagements, I do not feel it necessary to say any thing upon that subject in a case, the circumstances of which cannot possibly admit of a plea of that nature; but I am happy in the opportunity of mentioning the general experience we have had of the resolute and successful resistance given by individuals, some of them in the most humble conditions of life, to the progress of this combination, and in proportion as this spirit obtains and is cherished amongst the people, in proportion as they shall disdain to yield a prostrate and passive submission to the presumptuous ordinances of this wicked association; in the degree that the magistrates and other civil authorities of the county, shall discharge their duties with fidelity and vigilance: this combination called "*Threshers*" will decline and dissipate, and at length vanish and sink to nothing. By resisting the evil in the first instance; by opposing its first approaches, and defeating

its first array on the verge of your county, the communication of this mortal contagion has been prevented; and the misguided prisoners at the bar, as they are the first, will, I trust, be the last victims of this unhappy delusion within your county.

Gentlemen, the progress of this commission has, besides many other salutary effects, produced this very satisfactory one for the country,—that it is now pronounced from the highest authority, that of the venerable judges on the bench, that the several laws relating to tumultuous assemblies are now in full force: and, besides that there remains no doubt of the existence of those laws, no man can fail to understand them in all their parts and enactments, they have been so often and so fully explained and observed upon. It is indeed the nature of this code of laws (made for times of public inquietude), to remain dormant and inactive in periods of public repose; but they sleep without expiring; and the moment riot and disorder appear in the country, those salutary laws are called into immediate force and activity; and they afford an extensive and ample remedy for every evil which can arise from tumultuous and unlawful assemblies of every kind and description, and are so appropriated to such disturbances, that there is not a gradation of this species of crime from the highest to the lowest, from the moment of putting on the straw girdle and cap, the white shirt, or any other badge, through all the stages of insurrection, to the very confines of treason itself, which these laws have not accurately pointed out and provided against.

Gentlemen, it was my intention, and perhaps it would have been the natural scope of my address to you, to have explained these three several acts of parliament, the 15th and 16th of his present majesty, called the “Whiteboy Act,”—the 27th of his majesty, and the 36th. But I have been relieved from going much into detail upon the several branches of those acts, by the very able and judicious exposition of them which has been just delivered by Mr. Baron George, in his lordship’s address to the grand jury, and which must have made an indelible impression on the mind of every man who heard it; insomuch, that I should consider it a presumption (although it would otherwise have been my duty, if I had not been so ably anticipated), were I to now attempt to tread in his steps, in giving an exposition of those laws; when it is not possible to say that any thing has been left obscure and unexplained.

In touching however in any degree upon these laws, I should not omit to observe, that great pains have been taken by the legislature to correct that which I consider to be the source and cement of these kind of associations, namely, the administering unlawful oaths. Without that illegal and blasphemous bond, none of those conspirators, who in the memory of us all, under various denomina-

tions, have been from time to time disturbing the country, could have succeeded in seducing so many of the lower orders of the people to join them. It is therefore becoming, that I should mention distinctly, what the provisions are which the legislature has from time to time enacted, with a view to that most fatal bond of combination and conspiracy, the administering of unlawful oaths.

The Whiteboy Act makes it a high misdemeanor, by force, violence or menace, unlawfully to impose or tender any oath or any engagement, in any manner, on or to any person; and the person convicted is punishable at the discretion of the judge. The statute of the 27th of the king, has made it a felony for which the convict is transportable for life in any manner to administer, or cause to be administered, any unlawful oath or engagement, and a felony transportable for seven years to take such, not being compelled by inevitable necessity; and lastly, the statute 36 Geo. 3rd enacts, that to administer an unlawful oath, importing to bind a person to be of an association or confederacy (such as these) or to bind the person not to give evidence, shall be a capital felony.

It is impossible indeed, for any honest and rational man to conceive (if there were not acts of parliament upon the subject) how any man can be criminal enough to think himself bound by an oath, the very terms of which go to dissolve all those obligations, which it is the duty of human beings to observe, either from a sense of religion, or moral principle, or duty to society at large. The very terms of the oath import to bind the hypocritical, or deluded taker of it, to abandon all the duties which he owes to his Creator, and his fellow beings, and to release him from all obligations to observe the laws of God and man. They are sworn not to pay tithes, except to the parson—not to pay dues to the Roman Catholic clergyman beyond a certain specified amount—not to pay more than certain prices to the working people. Thus, fixing a *maximum* for the wages of labourers and manufacturers. Then, conscious of their own criminality, these reformers and seducers of the people swear them “not to prosecute” “to obey the laws of the Threshers, and to attend whenever called upon.” When men are legitimately called upon to attest their adherence and obedience to civil institutions, they are not sworn to obey laws which are unknown, or to support systems which are undefined. The sanction of all laws is their promulgation; and even the Creator has vouchsafed to reveal his law to his created beings; but these presumptuous conspirators affect to bind their party, by the blasphemous abuse of an oath, to obey laws which are unwritten and unexplained; couched in a vague and mysterious phraseology, insidiously simple, and artfully indefinite.

But, gentlemen, although the *Threshers*

have not stated in terms, what that system of laws is, which is called "*Captain Thresher's Laws*," and which they presume to swear the people to obey, every discerning man will easily know and understand this atrocious code, from its abominable effects. They are laws which ordain the overthrow of every institution of civil and religious authority;—the destruction of morals; the confusion of property; the frustration of justice; they enact that the bounties of nature shall be wasted, and the fruits of human industry prematurely consumed; they sanction pillage and robbery, the infliction of cruel pain, and barbarous assassination. These are the laws which are called *Captain Thresher's laws*, and these are the purposes mentally reserved, and to which the obligation of obedience is sought to be exacted by an oath. I am satisfied, however, that the fate of this confederacy will be that of all the many others which have existed from time to time in the history of this, too easily (I am sorry to say) agitated and deluded country; disgrace and dismay will be the portion of all its contemptible members, and a total overthrow and disclosure of the whole system; and *that*, by the merciful, but firm arm of the law, without any deviation from the ordinary administration of justice; and I now predict, that we shall soon have an end of captain *Thresher*, his perjured oaths, his wicked laws, and his misguided followers.

In saying this, gentlemen, I but anticipate the same fate for this wretched combination, which has attended all other similar associations which have preceded it. The White Boys!—The Hearts of Steel!—The Hearts of Oak!—The Right Boys!—The Peep of Day Boys!—The Defenders!—and all these, too, like the modern *Threshers*, vainly endeavoured to secure and cement their confederacies by solemn oaths and obligations, if they can be called such. These have all been defeated and put down, and the same code of laws which was found sufficient to dissolve and extinguish all the former confederacies, and insurrections—those same laws, when put in force with prompt and vigorous energy, will have the same effects against the combination of the present day. Unthinking and deluded people! what have they ever achieved by these associations!—What has been the fruit of their guilty excesses?—What have they ever gained by the delusive promises held out to them by their criminal seducers?—Is it the way to wealth, honour, comfort, industry, security? No! but it leads to want and wretchedness—to the relaxation or total neglect of industry—to beggary and ruin—to disgrace, exile, premature death, certain and ignominious punishment. These have been the fatal consequences of such delusions at all times heretofore; these will ever be their consequences, as long as law, order, and government are triumphant in the land. To encounter these calamities, is it possible, that the lowest and most unthinking of the people,

can any longer be led away, to abandon the pursuits of humble industry—to engage in guilty and profligate conspiracies—to desert their homes and their families—sacrificing every moral and social duty—wasting the night in criminal vagrancy, and the day in terrified concealment—afraid to meet their honest and peaceful neighbours—conscious of their offences—forgetting equally their interest and their duty, and altogether unmindful of the sacred obligations which they owe to their country, their king, and their God? It is impossible, that the flimsy knavery of the few wicked and insidious wretches, who have introduced this fatal combination among the peasantry, can any longer impose even upon the credulity of youth and inexperience.

Gentlemen of the jury, the prisoners at the bar, are indicted upon the statute 15th and 16th Geo. 3, cap. 21, and section 2nd: which makes it a very high misdemeanor, for any person or persons, either by day or night, to rise and appear armed and disguised, or wearing any unusual badge, or dress, or assuming any unusual name or denomination; and the charges against them, to bring their case within these branches of the section of the act are, that they were of a party of the number of about five hundred, who on the night of the 20th of November, did assemble, and appear in arms, by night, wearing the badge or dress of the *Threshers*, namely *straw* round their hats and straw caps, and white shirts, and that they named and denominated themselves *Threshers*; and, gentlemen, it will appear, that they were taken in the fact, by Mr. Kerr, the chief constable, assisted by captain O'Reilly, of the Cavan militia, and a military guard; these two gentlemen, and the soldiers will detail the circumstances of the transaction in evidence—it is a case, as I conceive, that cannot admit of doubt or difficulty, and it will be attended with this salutary result, that the people will be convinced, that there is no device which can evade the vigilance of the law, that there is danger attending the very name and dress of *Threshers*, and that to assume either, is a degree of guilt punishable with fine, imprisonment, standing in the pillory, or whipping.

Gentlemen, before I close my address, I beg leave to congratulate this very respectable county, upon the spirit and unanimity which it has shown in resisting this combination; the effect of which is, that the county may now be said to be in a great measure exempt from those disturbances and atrocities, which a more supine or timid conduct would have only generated and encouraged; I have no doubt also, that you will add firmness, in the administration of the laws, to vigour in executing them; that by an honest and conscientious discharge of your duties, as jurors, you will render law and justice triumphant over conspiracy and insurgency: and that when the judges and those who have attended them in their progress under this special com-

mission, shall have left your county, you will continue to act as you have hitherto done—that you will remain at your posts—that you will guard the unprotected, inspire the timid with courage, and enable the poor, but well-disposed peasant, to maintain his cottage as his castle of defence. Thus protected by the strong arm of the government, and of the laws—supported by the magistrates and resident gentlemen—the country may bid defiance not only to those wretched insurgents, but to every other foe that shall dare openly to assail its peace or insidiously to undermine its prosperity.

William O'Reilly, esq. sworn.—Examined by Mr. Solicitor General.

Are you an officer in the Cavan militia?—Yes, sir.

Where were you quartered lately?—In Granard.

At what time?—In November last; at present I am quartered at Athlone.

At the time you were in Granard was the country disturbed, or was it in a state of tranquillity?—It was very much disturbed by people called *Threshers*.

Were you called upon by any magistrate to go out against these people?—I was, by Mr. Kerr, a peace officer.

When were you first called upon to go out?—About the 13th of November.

Did you fall in with any of them?—We did.

To what amount?—To the best of my opinion, 400 or 500 men; from their shouts and their cheering, I judge that was the number.

Court.—Did you see them also?—No, my lord, it was very dark that night: I only calculate from the noise they made.

Mr. Solicitor General.—Did you meet with any yeomen on duty that night?—We met some who appeared to be collected for the purpose of protecting their houses.

Did you come near those persons?—I got within fifty yards of them, when they were in the act of breaking open a poor man's house; I heard the knocks plainly at the door, and my men fired upon them.

What became of them?—They fled, leaving pikes, pitchforks, poles, hats, shirts, and shoes to a great amount. The hats had white bands upon them.

What kinds of bands?—White handkerchiefs with the corners hanging down.

What was done afterwards?—After they dispersed, we thought it would be right to go up to the house. We knocked at the door; they asked, who is there? Mr. Kerr answered, friends, Mr. Kerr from Granard.—“Thank God,” said the people within, “We have been defending the house, but are afraid that the haggard is destroyed.” We got a light and went to the haggard, and saw that the corn was all thrown about in the wet and the dirt.

Did you go out again?—I went out several

nights without meeting any of them, until the 20th of November, when after great fatigue and much wet we were going quietly towards a place where we had information of a party assembling. I was with an advanced guard: two of the men began to run forward, I went quick after them; one of them took up a hat with a band upon it, and said, the man who had it ran to the house, into which he was pursued by the other; the soldier had great difficulty in getting him out of the house; I told him to run him through if he did not come out; he then came out; I asked him his name, he said, “Give me a book and I will swear I do not know my name.” I asked him of what country he was—he said, “Give me a book and I will swear I do not know.” I asked him, did the people of the house know him; he said, they did not, and the people of the house did deny him.

Who was that man?—This is the man; I have since learned his name is Fitzsimons [pointing to the prisoner Thomas Fitzsimons]. He is the man, who ran into the house; he had taken his coat off and was in his shirt; he attempted to escape three times and endeavoured to get his head through his shirt. After that, I ordered two of the men, in his hearing, to fix bayonets and to run him through if he again attempted to escape, and I myself told him I would run him through; I said this in order to keep him quiet.

Did you hear the shouts of any party that night?—I did, of at least 500.

Had your men their watch coats?—They had; I made them put their watch coats over their belts, lest they should be seen, the night being bright.

Did you see any other person after the shouts?—I did; there was a man brought a prisoner by one of my men: he was dressed in straw; this is he. Patrick Coyle, (labourer).

How was he dressed in straw?—He had a straw cap and had straw about his head.

Was any other prisoner brought to you?—Not immediately; I sent the men forward, and between the advanced guard and the main body, I met this man, Patrick Coyle, called farmer, with a pitchfork in his hand, going in the direction towards the party.

Court. In what direction was the prisoner going?—In the direction to the main body of the *Threshers*, or rebels.

Mr. Solicitor General.—Was he dressed in any particular way?—He was not.

At what hour was this?—It was past twelve.

William O'Reilly, esq. cross-examined by Mr. Fleming.

You said that a soldier told you the man had gone into a house: now I beg you will confine yourself to facts; do you know any thing more of Fitzsimons, than seeing him when he came out of the house?—I did not.

Upon your asking him his name, he said,

he did not know?—He said, “If I gave him a book he would swear he did not know.”

Did you believe him to be a mad man?—No, nor a fool either; but a knave, as all of his kind are.

If you knew a man, who did not know his name, would you rather consider him a knave than a fool?—I would, or any man who would attempt to disturb the country.

As to Patrick Coyle, the farmer, you say you found him between your main body and the advanced guard, with a pitchfork in his hand. Was the night dark?—Not then; it was bright.

And he was moving in the same direction with your advanced guard?—No, I did not say that.

Then your advanced guard was not moving towards the enemy?—No, not at that time.

Did you intend to bring your main body to the enemy?—I did.

Did you order them to advance?—No.

What direction were you taking?—I was taking a position across the road to a place where I had information they were to assemble.

Did you ever hear, that the place where you met Coyle, was upon his own ground?—I did not, but it was an odd hour for a man to be out with a pitchfork.

Did you speak to him?—I desired him to come over to me, but he refused, I called to him, to stand, and sent a soldier to take him, but desired him not to hurt him. I knew the soldier would fetch him. He desired him to submit, which he refused, until the soldier struck him two or three blows.

George Thompson sworn.—Examined by *Mr. O’Ferrall*.

To what regiment do you belong?—The Cavan militia.

Were you quartered in Granard last November?—I was.

Did you accompany Mr. O’Reilly in going out at night during that month?—I did several times, the first time was the 12th or 13th of November.

Did you meet any party on the first night?—We did, a party called *Threshers*, consisting of 500 or 600 men.

When were you last out with Mr. O’Reilly?—About the 20th.

Did you take any person that night?—I was in the advanced guard, and the last man but one; there was a man, whose name I have heard is Fitzsimons, came from the end of a house, with his hat dressed with straw, we had our watch coats over our belts, and he thought we were *Threshers*, but when he saw his mistake, he turned back, threw off his straw hat and ran into a house; I pursued him.

How did you find him?—I gave him no time, he was tearing off his coat, and threw himself down upon some sheaves, I took him prisoner.

Do you know him now?—I do, this is the man.

Court.—Are you sure you did not lose sight of him?—I did not, I dragged him out, but he resisted until the officer came to the house and then we got him out.

Mr. O’Ferrall.—Did the prisoner say any thing?—He said, he did not know his name; the man of the house denied him and cursed him for coming there.

Court.—Did the prisoner hear the man of the house deny him?—I believe so, he was near enough.

Mr. O’Ferrall.—Can you point out any more persons taken that night?—This is one (pointing to Kilbride), he had his hat dressed in straw, and had a staff in his hand; this man, Patrick Coyle (farmer), had a pitchfork. Who took him?—Clinton.

George Thompson cross-examined by *Mr. Fleming*.

You followed Fitzsimons immediately?—I did.

You never quitted sight of him?—I did not, for I got to the door almost as soon as he did.

Do you mean the outer door?—No, but the door of a room in the house.

And then you came out of the house to inform your officer, that Fitzsimons was there?—No, but I suppose the remainder of the party told him I pursued a man into the house.

You saw Patrick Coyle taken; was it upon his own ground?—I do not know.

Was he standing?—He was behind a ditch, and Mr. O’Reilly desired him to come over, which he refused, and then a man was sent to take him.

John Clinton sworn.—Examined by *Mr. Solicitor General*.

Were you out with Mr. O’Reilly, on the night when some men were taken?—I was.

Do you recollect the persons who were taken?—I do.

Point them out.—This man, Kilbride, and this Fitzsimons, Patrick Coyle (labourer) and this Patrick Coyle (farmer).

Had they any arms or weapons?—Kilbride had a lump of a stick, which I got in his hand.

Had he any thing particular in his dress?—He had no dress on him, but he had platted straw.

Who took him?—I took him; I thought I heard some noise about a house on my right hand, and with that, Kilbride came running out of the gripe from the end of the house, and said, “Boys, welcome!”

How were you dressed at that time?—We had frize great coats on over our belts.

Court.—Had the prisoner Kilbride, straw upon him at that time?—He had platted straw upon his hat.

What passed, after he spoke to you?—I

took hold of him by the breast, and there kept him; when he found who we were and that he was mistaken, he began to tremble and was afraid.

Had he any weapon?—Nothing but some sort of a fork handle, I do not remember what it was.

[Not cross-examined.]

William O'Reilly, esq. again examined.

Did you hear the expression made use of by Kilbride?—I did; I was within two yards of him, and I am sure he mistook the soldiers for a party of Threshers.

James Foster sworn.—Examined by Mr. Sergeant Moore.

Were you out with Mr. O'Reilly on the night of the 20th of November?—I was.

Did you ever see a man of the name of Patrick Coyle?—I did.

Point him out?—This is the man [this was Pat Coyle, called the labourer.]

Did you see him at any place that night?—I did, I took him coming down the road.

How was he dressed?—He was dressed in straw: he had straw on his hat, and about his body.

How were you dressed?—In our watch-coats and foraging caps.

Where were your belts?—Inside the watch-coats.

What kind of a night was it?—It was wet, but occasionally light.

Had Coyle any thing in his hand?—He had a lump of a pole.

What did he say?—"You are welcome—What kept you?"

When you took him prisoner did he do any thing?—He began to pull off the straw, but I forbid him and brought him with his cap to my officer.

James Foster cross-examined by Mr. Fleming.

You saw no party that night?—No, not at that time.

James Foster examined again on the part of the Crown.

Did you see any of the persons who were assembled together that night?—No, only those who were taken.

Did you hear any shouts?—I did, many.

A Juror.—Was it a usual time for people to be out?—I think not.

Hugh Kerr sworn.—Examined by Mr. O'Ferrall.

Do you hold any employment in this county?—Yes, I am constable of the barony of Grannard.

Was the country disturbed in the month of November last?—It was, by a number of persons under the denomination of *Threshers*.

Did you take out any military party?—I did,

I took out lieut. O'Reilly, and a party of the Cavan regiment.

Do you remember the first night you went out?—I do.

What numbers did you meet?—I think there was 500 or 600 men, judging from the cheers they gave, and they cheered as regularly as a military body.

Did you hear them attacking any house?—I did, I heard them rapping and tattering at a house.

Did they get in?—No, the persons in the house would not let them in: when we found them knocking at the door and making a great noise, and shouting out, "follow follow!" and hearing distinctly the feet of some of them, some of the soldiers fired; they instantly dispersed—we pursued and found pitchforks and pikes and shirts and shoes and hats with bands upon them.

Did these people change this uniform after that night?—They did, they changed it to straw.

Had they done any injury to the haggard of the house where you met them?—They had thrown down a stack of corn and scattered it about in the dirt, and they threw some sheaves upon the top of the house; they also threw down a cock of hay.

How many men were inside the house, and who kept these people out?—Only the two sons of a widow Connell, with whom they live, and they defended themselves with pitchforks.

Did you go out again after that night?—I did, several nights.

Did you go out on the night of the 20th?—I did.

Had you any information which induced you to go to any particular place?—I had information, that they were to assemble at a particular place.

Did you see any persons made prisoners that night?—I saw these four men at the bar.

Were they dressed in any particular manner?—They all had straw, except Coyle the farmer.

Hugh Kerr cross-examined by Mr. Fleming.

Where was it you met these people?—They came on the lands of Culleenmore, and continued to the lands of Leitrim.

Do these prisoners live there?—I believe they live in the lands of Culleenmore.

Where was Patrick Coyle, the farmer, taken?—At Leitrim.

Upon his own ground?—I believe not.

They might be within twenty perches of their own ground?—They were taken in different places.

Fitzsimons was taken in a house?—He was taken upon the road, but ran into a house, the people of which said they knew nothing about him.

Did you know any of the people who composed the assembly?—I did not.

How far was the main body of the party from the place where these prisoners were taken?—About a quarter of a mile.

You did not get up with the main body?—I did not: if I had, you would have more of them here.

Then the main body were assembled at the time these prisoners were taken?—They were shouting, as I could judge, in great numbers, and I think if we had not met those men, we would have got up with the main body.

[Case closed on behalf of the Crown.]

Mr. *Fleming*.—My Lords, and Gentlemen of the Jury;—I am in this case counsel for the prisoners, and a very arduous task it is for me under all the circumstances—when riot and disturbance have spread through the country to such a degree, as to make it necessary to send your lordships upon this special commission, and that such pains should be taken for the preservation of the public tranquillity. Your lordships, and the gentlemen of the jury have heard a very able and very proper statement from the learned prime serjeant, and as he did not regret that the task had fallen upon him—that the abilities of the attorney general were not necessary upon this particular occasion—I feel as little regret in taking upon me the defence of these men, when I see, that they are tried before judges, who will give them the benefit of the law, as far as they can be entitled to it, and that they are in the hands of a jury who will consider dispassionately, and determine this case strictly according to law, as it will be expounded by the Court.

Gentlemen, the prisoners are indicted under the Whiteboy Act; and it is a necessary part of the crime that they should assemble tumultuously together. Possibly I may not be right in my construction of the statute; but as I read the law, it is necessary that a number of persons should assemble together; and that the mere finding of an individual, with a fool's cap upon his head, not in company with others, does not constitute the offence with which these prisoners are charged; but that it is necessary to show they assembled in numbers. The statute says, "if any persons armed with firelocks or other offensive weapons, or having their faces or bodies disguised, or assuming any particular name or denomination, &c. shall assemble themselves," &c.—Therefore, it is not merely necessary that they should do the acts which are mentioned in the statute, but it must be proved, that they assembled together. Now these prisoners were taken at different places—the evidence does not shew that they were together, and I shall trouble the jury with only one witness to show, that one of the prisoners, Patrick Coyle, the farmer, was in his own field, and to shew the occasion of his going out, and that he took a pitchfork with him for his defence and preservation. My

client will then be in the judgment of the court, whether he comes within this act of parliament. With regard to the cases of the other prisoners, I am not furnished with any circumstances to do away the evidence which has been given against them; but I am sure they will be dealt with according to the principles of law, construed as strictly as possible in their favour.

Lord Chief Justice *Downes*.—The Jury must believe, that there was a tumultuous assembly and that these prisoners were of that assembly, before they can be convicted.

Mr. *Solicitor General*.—Perhaps, my lord, it will not be necessary that the jury should be of that opinion; though, we think, if that were necessary, there is abundant evidence of it. The charge against the prisoners is, assuming an unusual denomination, and also rising, assembling and appearing in arms, and also wearing a particular badge or dress. Now, the words of the statute are, "if any person or persons shall rise, assemble or appear," &c. so that *one* man appearing under those denominations, is equally guilty. But we admit, that in order to bring the prisoners within the operation of the statute, it must be proved, that there was an insurrection for unlawful purposes. But when once the country is proved to be in that state, *any* man who appears in an unusual dress, or with arms, to the terror of his majesty's subjects, is within the statute, the offence is put disjunctively—and it is within the statute, whether one man or one thousand so appear.

Lord Chief Justice *Downes*.—You admit that there must be a tumultuous assembly.—Such a rising, or assembly implies more than *one* person, and the persons who rise or assemble, must be connected with the tumultuous object. They may form various and distinct parts of the system—there may be a rising, assembling, or appearing as parts of the same body.

Mr. *Solicitor General*.—My lord, we are all agreed upon that.

Mr. *Fleming*.—Since I addressed your lordships, I have been informed, that there are more witnesses than I had mentioned; your lordships will excuse me for calling them.

Court.—You may examine as many as you think proper.

Thomas Coyle sworn—Examined by Mr. *Fleming*.

Do you know Patrick Coyle, the prisoner, called the labourer?—I do.

What relation is he to you?—Brother.

Where was he the night he was taken?—He was making off from these people.

He wore a straw cap that night?—Yes; my brother and I kept these people out some nights before, there were two other young men in the house with us; the night after a stronger party was to come, and we went through the country different ways to avoid them.

Do you know any thing else of your brother that night, when he was taken?—I did not.

Did you see him that night afterwards?—Not till I eat my supper.

Do you know the other Patrick Coyle?—I do; I was at his mother's house, making away from the *Threshers*; he came in and asked me, "would I stay there that night?" I said I would not, that I was making off. He went out for his mare, and I saw no more of him.

Did he say for what purpose he was going for his mare?—No, he did not.

Thomas Coyle cross-examined by *Mr. O'Ferrall*

Did you put any thing on your hat, when you went from home that night?—I never did.

Do you not believe Patrick Coyle put some straw upon his hat, to escape from the *Threshers*?—He told me the *Threshers* caught him as he was making off, and put straw upon his hat.

Court.—When did he tell you that?—In the guard-house at Granard, when he was a prisoner.

Mr. O'Ferrall.—At what o'clock did you see him that night, before he was taken?—It was half-past ten, when I went down to his mother's place; but I remained there a long time.

Did you remain there till twelve o'clock?—No.

Did you remain there till eleven?—I did, till after.

You hid yourself, I suppose?—I did.

And you all made off from the *Threshers*?—I believe so.

Did you hear any shouts that night?—I did.

Did you go towards the shouts?—I did not.

Did the Coyles go towards the shouts?—I believe not.

Did you ever see any gentleman with a white shirt over his clothes, or a handkerchief upon his head?—Never, but a dead man.

That was the only *Thresher* you ever saw?—I do not know what he was.

Had he a hat upon him?—No.

How many of these rogues were about your brother Paddy, when they swore him?—He did not tell me how many.

Did not you beat them off?—No.

Were there many?—A great many.

Did you know any of them?—No.

How long was that before your brother was taken?—The night before.

Did you hear of the widow Connell's house being attacked on the night of the 13th?—I did.

And that shots were fired?—I did.

Did you hear that the party left behind them shirts, shoes and hats?—I did.

Did you hear, that after that night they changed their dress from white shirts to straw —I did not.

How soon after that night did they appear in straw?—I cannot tell.

Did not your friends tell you?—They did not.

When was Pat. Coyle sworn?—He did not tell me.

Did you know any *Thresher* in your neighbourhood?—How can I tell, when I never went with them.

Do you know any one *Thresher*?—They said they were all sworn.

But you never see any of them?—I did not, only the night they came to our house.

You never heard the voice of a *Thresher*, that it did not strike terror into your heart?—I was always afraid of them.

Did you ever hear that Fitzsimons was considered a fool?—I did not.

Did you ever hear of a man saying, "Welcome Boys" to men he was afraid of?—I did not.

Did you ever welcome a soldier?—Not in that station.

You did not know one *Thresher* in the barony of Granard before your brother was taken?—I did not.

Did you upon any other occasion?—I did not.

Nor hear of them?—I did not.

John Hanlon sworn.—Examined by *Mr. Fleming.*

Do you know any thing particular that happened upon the night of the 19th of November?—I do: they came to my sister's place, and we resisted and hunted them away: Pat. Coyle (labourer), and his brother, and one Brady came to our assistance, when my sister called to them.

Do you know any thing more?—I do: next night, I was in dread of a stronger party coming, and, with terror in my heart, Pat. Coyle, Brady, and I, went off to avoid them.

Where did you go to?—We retreated from the *Threshers*, as we formerly did.

Did you see any of them that night?—I did not.

John Hanlon cross-examined by *Mr. Attorney General.*

How far do you live from Coyle's place?—About five perches.

You resisted the *Threshers*?—The girl came, and said they were come; I rose up, and went to the door, and rushed out with a pitchfork, and drove them away.

How many were there?—I cannot tell.

Were they five or five hundred?—I cannot tell; I was in such a terror, I did not count them.

Were there more or less than five hundred?—There was not five hundred.

Did you hear their voices?—I did, some of them; but I did not understand what they meant.

You do not know their laws?—I have heard them.

Did they attempt to swear you?—They did not.

Why?—Because I rushed out upon them.

They were frightened by you?—They were.

How far do you live from Granard?—Three miles.

Did you tell Mr. Kerr of this attack upon you?—I did not; I left the place to them, and let them do as they chose.

Could you not have gone to Mr. Kerr in the morning?—There was no use in going about to any body.

How long were you absent from home, after these men were taken up?—The next day I was in my own house.

Where did you sleep that night?—At one Comusky's.

How near were you to the main body that night?—I only heard them shouting.

They were in the next townland to you?—They were.

At what time did you go away?—I cannot tell, having no clock.

Did you hear the shouting before you went away?—I did.

Why did not you go out with Pat. Coyle?—Every man went according to his humour.

You all agreed to go together?—We did.

Where did Coyle say he would go?—He did not tell me.

Did you put any straw upon your hat?—How could I get away if I did.

Did Pat. Coyle put any upon his hat?—Not to my knowledge.

If Thomas Coyle was afraid to stay in his house, was Pat. Coyle's a safe place for him?—He ran away several nights before.

If he said he went to the other Pat. Coyle's, would you believe him?—I cannot answer for him.

Did you ever see the face of a *Thresher*?—Only the night they were at my house.

Did you know any of them?—I did not.

Have not many of the inhabitants of Cullenmore and Leitrim, been sworn by the *Threshers*?—I cannot tell.

Can you form a belief as to the person or face of any one man, who has been concerned in the *Threshing* business?—Barring seeing them to talk to me the next day: but to know them to be *Threshers*, I did not.

Did you ever hear that Pat. Coyle was sworn by them?—He told me they overtook him in his retreat, and made him swear.

When did he tell you that?—The next day, when he was in custody.

Did he tell you how many there were of them?—He did not; I did not like to ask him, or to be acquainted with *Threshers*.

Did he tell you what the oath was?—I did not ask him.

Did he tell you that he put straw upon himself?—I did not ask him.

Did he tell of the soldiers overtaking him in his retreat?—I did not ask him.

Did he tell you, that he said "Welcome, Boys" to them?—No.

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Do you suppose he knew any of them?—I cannot say; I suppose he did not.

[Case closed on behalf of the prisoners.]

Lord Chief Justice *Downes*.—Gentlemen of the Jury; the prisoners are charged with offences, which by act of parliament are made liable to certain punishments, as misdemeanors, at the discretion of the Court.—[Here his lordship stated the indictments.] It appears from the testimony of every witness, that the country has been infested by a number of persons, assuming the name and denomination of *Threshers*. Introductory evidence was laid before you to show you the state of the country, and the evidence given of the transaction charged in the indictment demonstrates the same fact. It appears from the testimony adduced on the part of the crown, as well as from that given by the prisoners that persons under the denomination of *Threshers* were, at the time stated, the 20th of November last, assembled in the country, and it will be for you to say, whether any of the prisoners formed part of that assembly. It does appear that all the prisoners were taken on that night—that at the time they were taken, they were within a quarter of a mile of the main body of the *Threshers*. It appears, if you give credit to the evidence, that three of the prisoners, Fitzsimons, Coyle the labourer, and Kilbride, were, each of them, dressed with straw upon their hats, which appears to be a common badge among the *Threshers*; and in one count of the indictment, the prisoners are charged with appearing so dressed, and any act either of rising, assembling, or appearing in such dress, is a crime.—The tumultuous party consisted of upwards of one hundred:—the prisoners were taken at a short distance from that party, and you are to determine, whether they belonged to it, participating in its guilt, or not.—With regard to Patrick Coyle, farmer, it is not proved that he wore any particular dress or badge. But it appears that he was out with a pitchfork—with what view or object you will determine. With regard to Fitzsimons, you find that he was pursued into a house by a soldier, who did not lose sight of him: his conduct is matter for your observation; he is asked his name, and he answers "Give me a book and I'll swear I do not know." "Where do you live?"—"I'll swear I do not know!" These are circumstances respecting this man, which deserve your consideration. If you believe the soldier, this prisoner conducts himself in the extraordinary manner, which has been represented. Whether that was the conduct of an innocent man, unconnected with this lawless banditti—or that of a man connected with them is a matter submitted to your judgment. He has brought no witness in his behalf.

With regard to James Kilbride, he is found with a straw dress upon him, and a stake in his hand.—No evidence is brought on his

behalf, and you will judge, from the manner in which he was taken, and from what was going on in the place, whether he was one of that assembly, which did rise, assemble and appear by night, in a manner sufficient to raise terror in the king's subjects, falling in their way.

With regard to Patrick Coyle, farmer, he was found with a pitchfork in his hand, and a defence is made for him, that he was either in, or close to his own ground, that he was there upon his lawful occasions, and was not one of the body—under these circumstances, his case differs from the others, he had no particular badge, or dress.—What his object was in being out is for your consideration, and you are to determine whether he formed any part of the illegal association. If you have any doubt, to be sure, you ought to acquit him.

Patrick Coyle, the labourer, is taken under these circumstances. The soldiers had their coats on to disguise their uniform; he comes up and addresses them with a welcome; the soldier examined has endeavoured to account for this conduct—you will judge whether naturally or not, that the prisoner mistook them for some of the party, and did not suppose they were soldiers. If in fact he did know them to be soldiers, and immediately upon his seeing them, saluted them with joyful expressions, it would be decided evidence, that those who came to preserve the peace were welcome, and it would be strong in his favour. But if you think he did mistake them for some of the party, and under that impression saluted them, it will be for you to determine whether that circumstance, with the others which have been proved, satisfies you, that this prisoner belonged to that party.

In his defence, he has produced witnesses to show, that he was not with the *Threshers*; at least not voluntarily, and that he was in the act of escaping from them when met by the soldiers. You will consider that evidence and determine what effect it shall have upon your minds. Gentlemen, upon the whole of the evidence, you have to determine, whether all or any of the prisoners were of that tumultuous assembly.—If you have any doubt of their guilt, they are entitled to a favourable verdict.

The Jury found all the prisoners Guilty.

December 19th, 1806.

PATRICK WREN was indicted for feloniously being present, aiding and abetting a person unknown in administering an unlawful oath to Alexander M'Cabe, "to be true to captain *Thresher's* laws; to attend when called upon; not to prosecute captain *Thresher* or any of his men, and to meet them the following night," against peace and statute.

2nd indictment for maliciously assaulting the dwelling house of Alexander M'Cabe, after sunset and by threats and menaces

causing the hall door to be opened, &c. against peace and statute.

The prisoner pleaded Not Guilty, and the following jury was sworn:

W. B. Montford	James Wright,
Richard Webb,	M. M'Cutcheon,
Alexander Kingston,	John Breaden,
Thomas Coates,	John Kinsley,
Alexander Crawford,	Thomas Lennon,
I. A. Goldsbury,	William Price.

John Strong sworn.—Examined by Mr. Attorney General.

Are you a yeoman?—I am, sir.

In what corps?—In captain Bell's

Were you out last month doing duty with part of that corps?—I was.

How many of you were in the habit of collecting and doing duty that time?—Generally twelve.

At what place?—At Magherabouy.

Were the yeomanry on permanent duty at that time, or were these voluntary meetings?—They were voluntary meetings.

What was the reason of your meeting together to do this voluntary duty?—To avoid these men called *Threshers*.

Explain yourself?—That we should not allow ourselves to be sworn by them.

Had you any reason to apprehend, that you would be sworn by them?—All the reason in the world, because they were all round us in every quarter of the country, and therefore we thought it better to muster and protect ourselves.

Had many of the people been sworn?—By all account there was a great many of them sworn.

Do you know a man of the name of Alexander M'Cabe?—I do.

Do you know Patrick Wren, the prisoner?—I do.

Is he any relation of M'Cabe's?—His brother-in-law.

Have you known the prisoner long?—I have known him these twelve years.

Have you ever had any difference or dispute with him?—Not worth talking of; we had a dispute about a clamp of turf, for which he charged one half crown too much.

How was it ended?—I left it to his oath.

And abided by it?—Yes.

How long ago was it?—Twelve months last harvest, but I bought the turf two years and a half ago.

Do you recollect the house of Alexander M'Cabe having been attacked in the last month?—I do, well.

At what time?—At four o'clock on Thursday morning, the 13th of November.

Had you been on duty that night?—I was.

How far is Magherabuoy from your house?—About two miles.

How far is it from M'Cabe's?—Only half way.

How many of the corps had been on duty that night?—About twelve.

Do you recollect the names of any of them?—There are three of them in town, Robert Crothers, Thomas Devany, and Henry Kennedy.

How long did you remain with them that night?—From about an hour after night fall, till near three in the morning.

Did you break up at that time?—We did, for the purpose of going to our several homes.

Did you return alone, or were you in company?—I went home alone; the rest lived nearly together.

Had you your arms?—I had.

Did you see any party of persons in your way home?—I heard shouts in different directions, and I delayed, thinking they would be gone out of the way, that I might get home.

What sort of shouting did you hear?—Huzzaing, and calling out, "Follow, follow," and there were also some shots.

Where first did you see any of them?—At M'Cabe's door: within three perches, I saw a party cross the road to the left, and I had no effort to save myself, but to throw myself to the right, behind a low wall, within three perches of the door.

How many of the party did you see?—As close as I could guess between sixteen and twenty persons.

Had you an opportunity of observing whether they were armed?—They were.

In what manner?—Clubs of different sorts, and poles, and for aught I know, pikes and guns.

Did you see any of the guns?—No, but I heard shots, after they scattered.

But did you see them at M'Cabe's door?—As they left the house and passed near me, I looked up and saw forks in their hands, but shortly after I heard some shots.

Did you hear what passed at M'Cabe's house?—They talked a good deal. I heard some of it, but a good deal not distinctly, for they spoke in a feigned voice; but I knew, they swore Alexander M'Cabe, not to prosecute captain *Thresher*, or any of his men.

Did you see M'Cabe at the time?—I did; he was in his shirt at the door.

Did you look over the wall at that time?—I did.

How do you know any oath was administered?—I heard them say "Kiss the book."

And are you positive, that part of the oath was, "Not to prosecute captain *Thresher*, or any of his men?"—I am.

Did you hear any noise at the door, before you saw M'Cabe there?—They called out, that he should get up, or they would break the door.

Did you hear any knocking at the door?—I did.

And was it after that you saw him in his shirt?—It was.

How long did they remain at the door?—Quarter of an hour, or something better.

Had you an opportunity of observing them any part of the time?—I did the whole time.

Did the whole party go away together?—Some of them remained behind talking to M'Cabe and among others his brother-in-law Wren.

Were you able to ascertain any of the persons who remained?—Patrick Wren, and another.

[Witness was desired not to mention the name of any person, not on trial.]

Are you certain, that Patrick Wren, the prisoner is one of the persons who remained behind?—By his voice.

Were you acquainted with his voice?—I was.

Had you such an acquaintance with him, as to enable you to swear to him?—I think so indeed.

Have you any doubt of the fact?—I have not indeed.

Mention what he said?—I could not understand rightly what he said to his brother-in-law, the noise of the others passing prevented me hearing distinctly what was said.

How long did the others remain behind the party?—About five minutes.

During that time, had you an opportunity of observing his person?—Not at that time.

But you distinguished his voice speaking to M'Cabe?—I did.

Could you learn what they said?—They were telling him the parts they travelled, and whom they swore.

Did the persons who had thus remained, afterwards pass on?—They did; they followed the party.

How near you did they pass?—Nearly within two paces.

Upon your oath had you an opportunity of observing them particularly as they passed?—I had.

Did you know the persons of any of them?—No, none of them, except Wren, and the others.

Are you certain you saw him there?—I think I did.

Are you certain you saw him then?—I think he was the man.

But are you certain he was the person?—I am.

Court.—What do you mean by saying, you think he was the man?—By his size and hearing him speak.

Mr. Attorney General.—Did you observe him, so as to know his person?—Not then, but by his size.

Did you afterwards see him, so as to know him more exactly?—When he overtook the party, he spoke again.

How far was it from the house when he overtook them?—Between ten and twelve perch.

Did you continue in the same place?—I did.

How did you know him when he joined the party?—By his speaking again.

Did you see his person at any time so as to know him?—Not in the dark.

Was it a dark night?—It was starry.

Could you ascertain what he said, when he joined?—He talked something, but from the noise, I could not exactly distinguish; but it was about the *Threshing* and “follow, follow.”

Are you certain, you heard the voice of Wren among that party?—I am certain, I did.

You have already mentioned, you had a quarrel with Wren?—I had the dispute I mentioned; I never denied it.

His life is now at stake; are you certain he is the man you saw that night, as you mentioned?—I am certain it was his voice; if I was not certain, I would not come forward to lodge informations against him.

How soon after did you lodge informations?—The day after I came to lodge informations, but captain Bell was not in Granard: I left word for him to send for me: he did on Monday, and then I swore informations.

You need not mention names, but were you able to ascertain any other persons among them?—I was, two others.

Did you see them, or did you know them by their voices?—I knew them by their voices, and their persons; after the party dispersed, some of them came nearer to me.

Did you charge those two persons, as well as the prisoner, when you swore before Mr. Bell?—I did.

When did you next see any of your corps?—Next night.

Court.—Had Patrick Wren any thing in his hand?—He had either a poll or a fork.

John Strong cross-examined by *Mr. Fleming*.

Where was the wall behind which you threw yourself?—Within three perches of M'Cabe's door.

Was it within full view of the door!—Yes.

Upon the opposite side of the way?—No, but upon the same side.

But you could not see without rising up?—I could not.

Then you hid yourself from this party, but took a peep now and then to see against whom you could swear?—I would be glad to know them all, if I could.

Was the wall behind which you placed yourself, situate between M'Cabe's house and your's, or between the guard-house and his?—If it was between the guard-house and M'Cabe's, I would have fired upon them.

What difference did it make in that respect, on which side you were?—Because I could retreat where I could get friends.

Then you could not get friends near home?—No, not one.

How near was your help?—A mile off.

Then what difference was there, which side of the house you were at, when your help was a mile off?—A very great difference; I had a hollow to run down to where I could get assistance.

But you could not escape up hill?—I could be taken by them, if I went the other way.

Were you ever in the army?—You know best.

Were you ever in the army?—Find that out.

Court.—Answer the question.

Mr. Fleming.—Were you ever in the army?—never.

Were you ever enlisted and attested?—Never, till I became a yeoman.

You had a dispute with the prisoner?—I had about turf.

Did you not owe him money?—I did, for turf.

How long did you owe it?—He said, it was a year.

You left it to his oath?—I did.

Was not a magistrate present?—There was.

Did not a magistrate summon you and order you to pay?—He did.

When you were called upon here, how came the counsel to know of the dispute?—I told it immediately at the time.

Then you were afraid your evidence would not be sufficient in consequence of this dispute?—That was not the reason.

What was the reason?—I thought it no harm.

Did you think it was any good?—Neither good, nor harm.

It was matter of conversation?—Just so.

And you did not think it would affect Wren?—I did not.

You only saw the tops of the polls as they passed you by?—Yes.

Did you lie so close, that you could only see the tops?—I raised myself, and saw them.

Did you not say, you only saw the tops of the polls?—I saw them between me and the sky.

You did not see the persons of any of them?—I saw them there.

Did you not say, that your reason for knowing they were armed was, that you saw their weapons between you and the sky? You did not see the persons of any of them?—I saw them there.

Did you not say that your reason for knowing they were armed was, that you saw their weapons between you and the sky?—I did not say so, but I had reason enough to know they had arms.

You were anxious to avoid being sworn?—Yes.

And you went to keep guard for that purpose?—Yes.

And you went home this night thinking there was no danger of being sworn?—To be sure.

Then how came you to set out just at the time, when it was convenient to be sworn, considering the time you must have been upon the road?—It was not so.

You left guard at three o'clock?—Yes.

Was that a very secure hour to break off guard, and go home alone?—If you had staid

out as many nights as I did, you would be glad to get to bed.

You need not argue with me, but answer. Did you not get to M'Cabe's while the party were there?—Yes.

They spoke in a very odd kind of manner, when they were all together?—They did.

You could not hear what they said?—Not well.

But you heard some of it better than other part?—I did, when those remained behind.

Did you ever hear any part of this indictment against the prisoner read?—I did not.

Did you ever know what were the necessary words to support it?—I did not; I did not say the prisoner said any thing in particular, but that he was of the party.

But you recollect their threatening, better than any thing else?—Some part of the oath I heard distinctly.

What was the latter part of it?—"Never to prosecute captain *Thresher* or his men, and to be ready to come, when called upon."

Can you tell any thing else they said?—No.

By virtue of your oath, did you ever, in the hearing of any person, declare you would be revenged of Wren, the prisoner?—Never.

Did you ever express enmity to him?—Never, but what I said to himself.

What was that?—I said, perhaps I would be even with him. But this is more than I wished.

Were you ever in any department?—I was a constable.

Are you one now?—No.

How came that?—I do not know.

Were you broke?—I was.

John Strong re-examined by Mr. Attorney General.

Did you communicate to your corps, what you saw that night?—I did.

To whom?—To the guard.

Mention their names?—Two of them are here whose names I mentioned before.

When did you tell them?—The next night.

Was that the first time you saw them after this business?—It was.

Upon your oath, did you tell them that the prisoner was one of the persons concerned?—I did.

Did you mention the names of the other persons whom you knew?—I did.

Where are those other persons?—I know not.

How soon after did you take the prisoner?—I was not of the party who took him.

Did the other persons charged, live in the country?—They did.

Are they in the country now?—I cannot tell.

Were any attempts made to take them?—There were: their houses were searched.

When was Wren taken?—On the Sunday when I lodged examinations.

Court.—You say you were afraid to fall in

with this party. How came you to go so close to them?—I did not think they would come that road.

Did you not hear them rapping at the door, before you reached the wall?—No, they were coming up, and they came so quick, I could scarce save myself.

And you had passed the house, before they arrived at it?—I had; they came across the road, and I got behind the wall.

The night was dark?—It was rather light. Was there light enough to know the face of any of the party?—No.

Then you swear to the prisoner only by his voice?—Only by his voice and size.

Who wrote down what you said when you swore informations?—I believe it was captain Bell himself.

Did he take down your words?—He did.

Did you say they had white shirts?—I stated to him they had not white shirts, and cannot say what they had.

Do you know how to write?—I do not.

Mr. Attorney General stated, that he had no objection that the informations should be shown to the counsel for the prisoner, and intreated that the Court would examine the witness.

Mr. Baron George.---I am sure you desire nothing, but an investigation of truth.

John Bell, esq. examined by the Court.

Whose hand-writing is this information?—Every word of it is mine.

It is stated in this information, that the party mentioned in it were dressed in white, as if they wore white shirts?—I understood so; I took it down from the man himself; I am in the habit of taking informations from the mouths of the persons swearing them, and I do not think I should have stated it thus, if it had not been so represented to me.

John Strong examined by the Court.

You told Mr. Bell, the party was dressed in white, resembling linen shirts?—I did not.

John Bell, esq. re-examined by Mr. Attorney-General.

Do you recollect the circumstance of the constables being reduced?—I do.

Was the witness, Strong, reduced at that time, or was he dismissed for any improper conduct?—There was some report of a shot having been fired by this man and another in Edgeworthstown, in consequence of a trial between Mr. Edgeworth and Mr. Bond; it was thought improper and was complained of as such, and the reduction took place immediately after.

Did Strong apply to you before he swore these informations?—I heard he had been in Granard looking for me, and I sent to him to come to me on Sunday after church, and then he swore the informations.

John Strong examined by the court.

Was this party dressed in white, resembling linen shirts?—They were not.

If they had been so, should you have seen it?—I think I should distinctly see it.

Thomas Devany sworn.—Examined by the *Solicitor-General*.

What corps do you belong to?—Captain Bell's.

Do you recollect keeping guard with Strong, any time last month?—I do.

Do you recollect parting with him at an early hour in the morning?—We quit guard and went home in the morning.

Do you recollect to have heard of Alexander M'Cabe's house to have been attacked by the *Threshers*?—I do.

After that, did Strong give you any account of it?—He did.

Were you and Strong on guard that night?—We were.

Did you see him next night?—I did.

Did he give you an account of the attack?—He did.

Where did he say he was?—Convenient to the house.

Did he mention how many were there?—He said a multitude.

Did he mention the name of any of them?—He did, Patrick Wren.

Thomas Devany cross-examined by *Mr. Fleming*.

He said he saw Wren there?—He did; he told me he saw him in the crowd.

Did he say so, positively?—He told me he was in it, I did not examine him particularly.

Did he tell you, where he was convenient to the house?—He did; he told me he was behind an old wall, next the garden.

Was he acquainted with Wren before?—I suppose he was.

He must have seen him there, or he would not have known him?—Of course.

He said he saw him?—He did.

You are sure he said so?—He did.

Jurymen.—Did he tell you, he saw any white shirts upon them that night?—He said, Alexander M'Cabe was in his shirt.

But did he see any white shirts upon the crowd?—He did not tell me any such thing.

Robert Crothers sworn.—Examined by *Mr. Sergeant Moore*.

Do you know Strong?—I do.

Were you upon guard with him?—I was.

Where?—At Magherabouy.

Did he ever tell you, of his seeing any persons at M'Cabe's house?—He did.

How soon after?—The next night after it happened.

Had he been with you the night before?—He had.

At what time did he quit you?—As near as I can guess, it was three o'clock.

Did every man go home then?—I believe so, I was gone a little before him.

Mention what he told you the next night?—He said, as he was passing M'Cabe's house, he saw 16 or 18 men coming across the road to M'Cabe's door, and he threw himself behind a little wall, that was convenient; that they went to the house and rapped at the door; ordered him to come out; that he came out in his shirt, but he could not understand a good deal of what they said; but a book was desired to be given to swear him to Captain Thresher.

Did he mention how many of them there were?—He did, and he said there were four at M'Cabe's door.

Did he mention Wren's name as one of them?—He did.

Did he say any thing more?—He did; he said he saw long poles, but could not tell whether they were pikes or poles.

Did he say any thing as to shirts?—No.

Or that they had any thing upon their hats?—No.

Did he or the party go away first?—They did.

Did he tell you whether he saw Wren, while he remained behind the wall?—He said Wren went to the door, and he understood by his voice that he was there.

Did he say he saw Wren?—He said, as they passed, he knew him by his size.

Did he say whether he heard his voice afterwards?—He did, but I do not recollect exactly the place.

Robert Crothers cross-examined by *Mr. Fleming*.

You have given very nearly the same account as Strong did?—I do not know.

Did you hear his evidence this day?—I heard something, but not all he said.

He gave you a particular account?—I believe so.

He said, he only knew him by his voice?—He said, he understood his voice; I do not recollect the very words.

A Juror.—Did any of you advise him to lodge informations?—We said, it was better to let captain Bell know of it.

Mr. Attorney General said, he would call Alexander M'Cabe, though it was not originally intended to examine him, as the prisoner was his brother-in-law.

Alexander M'Cabe sworn.—Examined by *Mr. O'Ferrall*.

Where do you live?—In a place called Leitrim.

Do you remember any party coming to your house last month?—Yes.

Were you in bed when they came?—I was.

Was your family in bed?—They were.

What did they do?—They called and rapped at the door, and desired it should be opened.

Did you open it?—My wife did, and denied I was in it, and they wanted her to take an

oath, whether I was or was not. She said, she would not take an oath for them. They threatened to ill use her, if *I was not to the fore*. I was hiding upon a loft; and hearing this, I jumped down; they threw down a book and desired me to take it up. The woman would not let me, but they insisted I should.

Did you take it up?—I did.

Did they ask you to swear any thing?—“Never to swear against captain Thresher or his men, to give no more than half a guinea for marriage, one shilling and one penny for christening, and to attend them the following night.”

Do you remember any more of it?—That was all that was in it.

What number was there?—I could not see more than three or four at the door.

Did they wear any thing upon them?—They did; they wore white shirts, and white handkerchiefs upon their hats.

Did you know any of them?—I did not; the night was dark, and I was obliged to grope for the book.

What relation is the prisoner to you?—Brother-in-law.

Had you your cloaths on?—Only my shirt.

[Not cross-examined.]

Mr. Fleming.—My lords, upon the part of the prisoner, I shall examine one witness to prove that Strong was in his Majesty's service.

William Smith sworn.—Examined by Mr. Fleming.

Do you know John Strong?—I do.

How long?—Twenty-five years.

Where do you reside?—In the parish of Granard.

Did he live in that neighbourhood?—He did.

Have you ever known him to be in his majesty's service?—I have, in the 48th regiment.

Do you swear he was in that regiment?—He was in the character of a recruit, and was called in the church of Granard as a private soldier.

Were you in church that day?—I was, and he was married there as a private soldier.

William Smith cross-examined by Mr. Attorney General.

Who was the clergyman?—Dr. Brooke.

How long ago was it?—Eighteen years.

What uniform did he wear?—The uniform of the regiment faced with white.

It made a great impression upon you?—It did; I had no wish to come here, but I got his majesty's summons.

What business do you follow?—Bleaching linen and yarn.

Do you follow that business now?—No, not this summer, the business being bad.

Do you employ men?—I do sometimes.

Are you a yeoman?—I was.

Were you called upon to do permanent duty?—I was not.

Were you dismissed from the corps?—When they were disbanded.

Were you dismissed?—No.

How long have you known the prisoner?—Twenty years.

Do you remember the night of the attack upon M'Cabe's house?—I do.

Did you see Wren that night?—I did that evening upon his own potatoe ground.

At what time?—An hour before dark.

Did you hear of the Threshers that night?—I very often heard of them.

Were you ever called upon to prove where Wren was that night?—I was not.

How long was Strong in the army?—The detachment marched to Cork for foreign service, and after some time, he came into the country with another wife, whom the people said was his uncle's daughter.

[Defence closed.]

SUMMING UP.

Mr. Baron George.—Gentlemen of the Jury: The prisoner stands indicted for an offence, which the legislature has made a capital crime. Upon a trial, so very serious, it is absolutely necessary, that the proof should be so convincing, as not to leave a rational doubt on the minds of the jury, before they convict the person accused.

It appears that M'Cabe's house was attacked by the Threshers on the night stated, and that the oath charged in the indictment was administered; and upon the very next evening, Strong gave an account of all the circumstances of the transaction, to those who were upon guard with him. He also went before a magistrate and gave information. Gentlemen, it is material to observe, that there appears to be a variance between his information sworn before the magistrate, and his evidence given here, in one particular circumstance; for the magistrate has taken down, in the information that he swore, that the persons he saw were dressed in white, resembling linen shirts;—here, he says, they were dressed in their ordinary clothes:—he told the same thing to his brother soldiers; but M'Cabe, who was sworn, said, that the persons at his house were dressed in shirts, and had white bands.

Gentlemen, you heard the situation in which Strong was placed, at the time of the transaction:—he states, that he is acquainted with the voice of the prisoner, and from that and from his size, having seen him pass near in the darkness of the night, he takes upon him to swear positively that the prisoner was one of the persons. It is very possible, that Strong does firmly believe, that the prisoner was one of the persons; but it is for you to determine, whether that opinion may not be rashly taken up. He swears to the voice of the prisoner, though he is not able to mention what passed—or that he understood any words which

were pronounced by that voice. McCabe must know the voice of the prisoner, being his brother-in-law, at least as well as Strong, and he says, he did not know one of the party. Under these circumstances, gentlemen, there is room, in the present case, for rational doubt in the minds of a jury: where that is so, and a man is upon trial for his life, a jury should give way to the doubt, and acquit the prisoner, in order that no possible mistake shall occur upon so serious a subject.

The Jury retired for some time, and returned a verdict—Not Guilty.

The *Attorney-General* expressed himself perfectly satisfied with the verdict; and that the jury acted with great propriety.

PETER MORRIS was indicted, for that he, on the 5th of November, 1806, feloniously did administer an unlawful oath to a person unknown, of the import following; "To be true to the *Threshers'* laws, and not to prosecute a *Thresher* or give evidence against him," against the peace and statute.

The Prisoner pleaded Not Guilty—and the following Jury was sworn:

W. B. Montford,	James Wright,
Richard Webb,	P. M'Cutcheon,
Alex. Kingston,	John Breaden,
Thos. Coates,	John Kinsley,
And. Crawford,	Thomas Lennon,
J. A. Goldsbury,	Wm. Price.

George Forbes sworn.—Examined by
Mr. *Attorney-General*.

Do you know Peter Morris?—I do.

Show him to me?—This is the man.

[Pointing to the prisoner].

Where did you live in November last?—With Patrick Mulligan.

Were you servant to him?—I was.

How long did you live with him?—Near half a year.

Do you recollect Mulligan's house being attacked by any party of people?—Yes, sir, I do.

What description of persons were they?—They appeared to be a set of *Threshers*; that was the name they went by at times.

Did they give themselves that name?—They did.

Had they any particular dress?—They had white shirts, and white upon their hats.

Were there many?—About half a score.

What time in the month of November was it?—I cannot recollect the exact day; but it was after Holland-tide.

What day of the week was it?—Sunday.

Did they demand admittance in any way?—They did.

Mention how?—We were in bed; they came round the house, rapped at the door,

and desired it to be opened; and Mulligan's wife ran and opened the door.

When the door was opened, did they administer an oath to any person in the house?—They desired the man to come forward: I made answer, it was a woman was in the house. They said, no harm should happen to her.

What did they do?—They desired her to lift the book, and swear not to prosecute any of captain *Thresher's* men.

Did they swear any person; you need not mention names?—They did.

What was the oath?—"Not to prosecute captain *Thresher* or his men; and to be up to captain *Thresher's* laws, and to join them the first and second night following."

In consequence of what passed that night, were you in company with them afterwards?—I was to be in uniform as they were.

Did you accordingly go among them, and when?—I did, on the next night following.

How many persons were in company on that night?—As nearly as I could make it out, about the matter of two score.

Were they in uniform?—They were all.

How long did you continue in company with them that night?—Two hours.

What kind of uniform had they?—White shirts over their clothes, and handkerchiefs round their heads.

Did they attack any house that night?—Yes, sir, they did.

On the following night, were you again in company with any of them?—Yes, sir, I was.

Were they dressed in the same manner as on the first night?—They were; but I was not, I had only a handkerchief.

Did you know the persons of any of the people, who were out on the first night?—I have a knowledge of them.

Was an oath administered to any person upon the first night you were out?—Not that I saw.

Was there on the second night?—All that I saw, I'll tell you: We were going up a hill in a small body, and we went to a house.

Have you seen that house since?—I did.

When?—Yesterday morning.

Who was with you?—Mr. Kerr and some of the army.

Did you point out the house to Mr. Kerr?—I did.

Was that the house you are now going to give an account of?—It is.

What passed on the second night you were out?—We came to the door—

How many?—There were upwards of five.

Had they any arms?—One of them had a gun.

Which of them?—The prisoner.

Was he one of the party?—He was.

Do you know where he lived?—I do.

Did you know him before?—I had a small acquaintance with him.

How far did he live from Mulligan's?—A quarter of a mile.

Did you know whose house it was?---Not at that time.

Mention what the party did at that house?

---They rapped at the door, and desired it to be opened; a man came forward, and there was a book, or paper, or something in the name of a book, thrown down to him, and he was desired to take it.

Did he take it?---He did.

What was said to him?---"To be true to the *Thresher's* laws, and never prosecute a *Thresher*."

Who threw down the book?---To the best of my belief and knowledge, it was the prisoner.

Was the prisoner present?---He was.

Court.---Are you sure and positive the prisoner was one of the party?---Yes, my lord, he was.

Mr. Attorney-General.---How long was the party at this house?---I cannot tell the space of time.

Do you know a man of the name of Mathew Balfour?---I do.

Have you known him long?---Yes, sir, I have.

How long?---Since I can well remember.

Was he out along with you the first night?---No.

Was he on the second?---Yes, he was.

Can you tell how he happened to be there?---Yes; he came to me where I was, and I went with him.

Was that the same night when the oath was administered?---Yes.

George Forbes cross-examined by
Mr. Fleming.

You were out two nights?---Yes.

Were you not more?---No.

The party broke up?---Yes, after my limited time.

What was that?---Two nights.

Court.---Do you mean that you were sworn to attend them two nights?---Yes.

And after that quitted them?---I did.

You know nothing of them afterwards?---No.

When did you give information of this?---I cannot recollect particularly.

Before whom did you give information?---Captain Bell.

[Here the information was referred to; and it appeared to be on the 19th of November.]

Mr. Fleming.---Who brought you before captain Bell?---My master was going to bring me; but my brother came to Granard, and sent for me there, and brought me to captain Bell.

Is your brother a yeoman?---He is.

Of Mr. Bell's corps?---Yes.

What were you promised for giving the information?---Nothing at all.

Were you never promised any thing?---No, I never was.

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Did you come forward to acknowledge, you had taken the *Thresher's* oath?---I did.

And you did so voluntarily and without any promise made to you?---I did.

Then you knew you had committed a crime?---Yes.

Were you not promised to be forgiven?---I was.

Who promised that?---Captain Bell.

Provided you swore against Peter Morris?

---If I would give information against the *Threshers*.

You have long known Peter Morris?---No, I have only a small acquaintance with him.

How long have you known him?---To see him up and down, as a journeyman weaver.

Do you not know him to be a man of good character and well spoken of?---Yes.

He was always considered a man of good behaviour?---Yes.

You do not know the man who was sworn?---I do not.

Can you tell who swore him?---To the best of my belief.

Can you swear positively?---I think it rather hard to swear positively who did it.

How was the man sworn?---The book was thrown upon the threshold and he was desired to lift it and take the oath as told to him.

Court.---Who repeated the words of the oath?---I do not particularly remember.

Mr. Fleming.---Did the man of the house repeat the words?---Not till they were told to him.

Mr. Attorney General.---Had any examinations been sworn against you, when you gave information?---Not to my knowledge.

Hugh Kerr sworn.---Examined by *Mr. Solicitor General*.

Do you know Forbes, the last witness?---I do, for two or three days.

Did you go to any house with him?---I went to a house which he brought me to, fourteen miles off in the county of Longford.

Whose house was it?---The house of James Reilly.

What was the town land?---Dunbeggan.

Was the man of the house at home?---He was not.

Did you inquire for him?---I did, and could not find him.

What was your object in going there?---Forbes brought me to the house, and said, it was one of the houses which the party was at, but he did not know the man's name.

What did you intend to do with Reilly, if you had found him?---I would have brought him here to this commission.

[Not cross-examined.]

Mathew Balfour sworn.---Examined by *Mr. Sergeant Moore*.

Where do you live?---In the lands of Clancragh.

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Were you living there last Hollandtide?—I was.

Did you ever go out with any people about that time?—I did, when I could not help it.

What caused you to go out?—They came to me dressed in white shirts and white handkerchiefs.

Did you see any arms?—They said, they had a gun, but I did not see much of them.

What did they do?—They came, and a dog barked; they struck at the door, and ordered us to open it; I was in bed, and desired them to have patience; then I opened the door, and desired them to come in, and they threw something upon the floor, and swore me “to be up to the Thresher’s laws;” I asked, what they were; they said, to pay half-a-guinea for marriage, one shilling and one penny for christening, &c. &c. They then swore me, whether there was another man in the house, and they went peaceably away, having sworn me to meet them the night following on the hill of Dunbeggan.

Do you know Peter Morris?—I do; this is he.

How long have you known him?—Two or three years.

What did you do the next day?—I had a couple of brothers-in-law in the Granard yeomen; I went to them the next evening, and told them of this.

Did you after that go to the meeting, which you were sworn to attend?—I did; I went to Dunbeggan; and not seeing them, was returning home, when I met them on the road.

How were they dressed?—They all had white shirts over them.

How many were there?—Three or four score, under or over.

Had they any thing in their hands?—Some had forks, some stakes and bayonets upon poles.

What did they do when you met them?—They waited for a little time, and then they dispatched a party.

Did you go with that party?—I did.

Where did they go to?—To Dunbeggan to all the inhabitants there.

What were they doing?—I can’t say, as I did not go up to the houses; but they went to all the houses in it, from house to house.

How many people did you know there?—Not very many.

You need not mention the names of any but such as are here?—This man, whom I take to be Peter Morris, was there.

How was he dressed?—Equal to all the rest, I saw no difference.

Was there a gun?—I compute there was a gun.

Who had it?—To my opinion this man at the bar had it.

Upon your oath, was he of the party that night?—They were all together: they scrupled going down to Rathmore, where the yeomen was. This man had not scruples more than

the rest; but he said, he would not go to it. He said, there were some men sworn to captain Bell’s yeomen, and he would not go there.

Were there any yeomen there?—There were five yeomen.

Of captain Bell’s corps?—Yes. The prisoner said, any man who chose to go voluntarily might, but he would not go to any place to raise a disturbance.

Did the party go to Rathmore that night?—They did not; I left them, and I believe they did not go.

Did they separate then?—They did.

Who told the party the yeomen were there?—I did.

Why did you tell them?—I told them, the yeomen would not give into their laws, on account of Mr. Bell, till they saw further.

Mathew Balfour cross-examined by Mr. Fleming.

How many nights were you with them?—Only the one night.

You parted, when they refused to go where the yeomen were?—I did; and I suppose they all went home afterwards.

You said, there were three or four score?—There were, more or less.

Was there that number the whole time you were with them?—I was sometimes from the main body, and sometimes with them.

But did the party amount during the whole time to forty?—They did.

You were afraid not to go?—If I was not, I would not go.

And many an honest man might be afraid?—To be sure; and to my opinion, not many would go, if they were let alone.

There were many equally unfortunate with yourself?—I think we were all of one crime.

And who would not have gone, if they had not been forced?—I think there was not a man would go, if he could avoid it; I say, to the best of my opinion.

And you consider Morris like the rest?—I suppose there was worse men than him in it.

Do you know Forbes?—I do.

Was he with you?—He was that night.

But you know no more of him, than that he was there?—No.

Court.—Do you know Reilly’s house in Dunbeggan?—I do.

Were you at his house that night?—I was not at his house. When we came into the village the men were divided, and sent in threes and fours to each house; some went to one house, and some to another.

Upon your oath, did you see the prisoner that night at Dunbeggan?—He might be in it; but I did not see him in Dunbeggan.

Did you see the prisoner that night?—I did at Rathmore.

How far is that from Dunbeggan?—The next mearing.

Did you see him there, before or after the party were in Dunbeggan?—After.

Was it in Rathmore they separated?—It was.

Did you see any book with them?—I saw no book.

Did you hear any mention made of a book among them?—I did; but do not know who said it.

What was said?—One man would ask, where the book was, when they got to a door.

What answer was made?—Somebody would go forward to the door.

Are we to understand, that you say positively that the prisoner was that night with the party in Rathmore?—I do.

Jurors.—Was the prisoner dressed in white?—He was; they were all dressed in white; a man dare not go, unless he was dressed.

Had you a white shirt?—I had.

Court.—Had Peter Morris any thing in his hand?—He had.

What was it?—I do not know; there was no one in it, but had something in his hand.

What sort of a thing was it?—It might be a gun, but it is hard to say what it was.

Did you ever swear it was a gun?—I do not know but I did; but I might make a mistake.

Do you recollect, whether you told the magistrate, that the prisoner had a gun?—I do not doubt but I did.

What do you say now?—To the best of my opinion he had.

Can you say positively?—I cannot.

John Bell, esq. sworn.—Examined by *Mr. O'Ferrall.*

Do you know Forbes, who was examined here?—I do.

Did he swear any information before you?—He did.

Was there any information sworn against him at that time?—No.

Did he go before you without any force?—I believe so; I spoke to his brother upon parade to fetch him to me, which he did, and he gave me information of this matter.

Do you know Balfour?—I do.

Did he give any information?—He did.

Was there any charge against him at the time?—There were some persons named by Forbes, and I did not proceed against them under the act of parliament as I might.

Was Balfour one of them?—Yes; and Wiggins, his brother-in-law, gave me a message, that if I sent for him, he could give some information.

Did you send for him?—Not immediately, because I doubted how far it would be right, in case he should be implicated. Afterwards I sent him a letter, and pledged myself he should not be molested till he returned.

Did he after that give information voluntarily?—He did.

Did you make him any promise?—None;

but that he should not be molested in coming or returning, and he gave his information as readily as any man could.

John Bell, esq. cross-examined by Mr. Fleming.

You sent a message that Balfour might come upon his parole?—That he should not be taken in coming to me, in consequence of my letter.

Was not Forbes in custody?—He was.

Then he might have been in the same place with Morris?—No; there are circumstances making a difference.

Do you consider that you have any power to say that one man is inferior in guilt to another, and that you will choose one of them to appear as a witness?—No; but I consider that I was anxious that a man of a greater degree of guilt should be brought to punishment.

Is Balfour deserving of credit upon his oath?—I believe he is.

If he swore that every man who was out was forced, would you believe him?—I would take down his information in writing to that effect, if he stated it so.

But if he swore it upon the table, would you believe him?—I cannot give my judgment upon that.

Is he a man of credit?—I think he is a man to be believed upon his oath.

But if he swore, that every man of the party was no more criminal than himself, would you believe him?—If he swore contrary to his informations, I must doubt one or the other.

If he swore that every man was forced, would you believe him?—If he stated that at first, I would have stated it in his information: but he did not attempt to say that.

Is he not more likely to tell the truth when cross-examined in court?—I think so.

And if he contradicted himself, would you think him deserving of credit?—You may answer that yourself.

Court.—Suppose Balfour swore, that all the people were out by force, would you believe him?—I would not take his meaning literally; I think he meant that all such of his neighbours as he knew were forced, and I might believe that.

DEFENCE.

George O'Brien sworn.—Examined by *Mr. Fleming.*

Do you know the prisoner, Peter Morris?—I do.

How long have you known him?—Near nine years.

What is his character, and state it to the Court and jury?—I never knew a more prudent and better conducted man in my life. In the rebellion, and every insurrection, he left his own place to acquit himself of getting into conspiracies against the king and country.

Did he live near Ballinamuck?—He did.

What was his conduct during the troublesome times?—He would go to respectable people, who were not joined with the rebels.

Why?—To shun the people of the country, who were in a rebellious way.

Did you know many others do that besides himself?—I never knew a man of his kind do it but himself.

George O'Brien cross-examined by the Attorney General.

In what county do you live?—In this county, towards the borders of Leitrim.

The people of Leitrim have been very kind to the people of this county, by including them in their plans?—I have no connection with any county, but my own.

In what corps are you?—Not any at present; I was in the Carnygallan corps.

When did you quit them?—About a year ago, being inconvenient to me.

You have heard that the country has been infested with disturbers?—I have.

Do you not consider them a great nuisance?—In the way they go on; for they were with me, and put an oath to me not to take tithe.

Do you not consider them as innocent men, wishing to redress grievances?—I cannot answer that.

Do you consider them as a set of lawless miscreants, or laudable reformers?—From the way they are represented at present I think—

How do you mean represented?—By the government.

Do you not think they are accused unjustly?—I do not know.

Can you form no belief of that?—No.

Have you not expressed your opinion of the cruel treatment of the Threshers in Mayo, by the juries?—I never heard of it at all.

Did you not hear of the proceedings at Sligo and Castlebar?—No.

Did you not hear that some men were sentenced to die?—I did.

And you expressed a feeling for the poor people?—I was sorry to hear they were brought in so innocently.

Just as innocent as Morris?—I suppose the same way; there is no man so loyal or well conducted.

Do you not believe that many were frightened to join the French?—Yes.

But Morris acted a loyal and a gallant part?—He used to leave his place to avoid rebellious mobs.

When the French came, he acted like a loyal person to his king and country?—I cannot answer for that.

How long is it since the Threshers paid you a visit?—I cannot rightly tell.

Try and recollect?—Some time in November.

Did they propose any oath?—They did to myself and others.

Was that oath taken by any person?—It was.

Did that person go to a magistrate and give information?—I can't say.

Would you not be likely to know, if he did?—I can't say.

Would you not know, if a young gentleman of twenty-five years of age, five feet eleven inches high, with a drab coat, leather breeches and boots, went to a magistrate to give information?—I can't say.

Did you ever hear that a person of that description had taken the Thresher's oath?—Perhaps you mean myself.

I do not impute such a thing to you; but did that person go to a magistrate?—He did.

To what magistrate?—To Mr. Booker.

In what time?—In a few days.

Did that person know any of them?—If you mean me, I did not.

Had you any arms in the house?—I had.

Were they yeomanry arms?—They were not.

What did you do with them?—I gave them to the captain.

What arms had you in the house?—A gun.

Did you ever lend it to any one?—No; except a man might ask it by way of diversion to fire at a mark.

Did you take a shot at the party that night?—I did not.

Is there any person here will give a character of yourself?—There is Mr. Newman.

Is there any person, not a sworn *Thresher*, who will give a character of you?—I believe so; Mr. Andrew Crauford.

[Defence closed.]

SUMMING UP.

Lord Chief Justice *Downes* stated the indictment to the jury, and then proceeded to sum up the evidence. It appeared that the country had been infested by disturbers, assuming the name of *Threshers*, and who under that name, and dressed in a particular manner, went about at night, and administered oaths to the inhabitants. With regard to the fact charged against the prisoner, there was the testimony of Forbes, who appears to have gone to a magistrate recently after the fact, and he swears the prisoner was one of the party who went to the house at Dunbeggan. The party consisted of three or four score. Some of them, of whom the prisoner was one, went to the door; the man of the house was called for; he appeared; a book was thrown down, and he was sworn. The witness is not positive by whom the man was sworn; but he swears positively that the prisoner was one of four or five persons who were acting thus at the house. If the jury believed he was there, as represented, and that he participated in the general object, it is the same offence; because all who were aiding, abetting, and assisting at the moment are equally guilty with the person who administered the oath. Forbes also stated, that the oath administered was, "To be up to the *Threshers* laws, and not to prosecute a *Thresher*." It will be for the jury

to say, whether that is the import of the oath stated in the indictment; for the prosecutor is not bound to set out the exact words. If the jury believed that this oath was of the import alleged in the indictment, and that it was administered for the purpose of making the person to whom it was administered become a member of that confederacy, which is proved to exist, the first charge stated against the prisoner will be supported; provided, gentlemen, you believe that the prisoner was one of the party. With respect to that fact, the witness could not swear positively who administered the oath; and as to the arms carried by the party, he would not swear positively that the prisoner had a gun: the witness only swore upon his belief. However, the witness swore positively that the prisoner was present at the house, when the oath was administered and you, gentlemen, will determine upon his credit.

Gentlemen, another witness was examined in support of the indictment, named Mathew Balfour. Both these witnesses appear by their own account to have acted in the very transaction, with regard to the conduct of which they appear to criminate the prisoner. Forbes gave information, before any charge was preferred against him: nor to this moment does it appear that any information has been sworn against him. Balfour was implicated by the account given by Forbes. Under these circumstances, gentlemen, these witnesses come before you, each participating of the offence of which they accuse the prisoner, and therefore their testimony should be received with all imaginable caution. In the ordinary cases of burglary and robbery, when a person who has participated in the offence appears, and deposes to his being present at the transaction, the fact of inculcating himself gives a credit to his narration, so far as that you may safely credit his accusation of himself: but so far as it may affect others, a jury generally require some corroboration from circumstances, or other testimony. In the present case, perhaps, you will think that they were reluctantly engaged; one of them gave an account of the transaction, and a peace officer went to the house, in expectation of finding the man who was sworn, but he was not found, nor does he appear as a witness on either side. In consequence of the information given by Forbes, Balfour was sent for, and upon his examination here, he admits he was one of the general party, but not at the house where the man was sworn. He also states, that the prisoner was one of the party, and he mentioned the reluctance expressed by the prisoner to go to a village, on account of the yeomen. As to the fact of the prisoner carrying a gun, he would not swear positively to it now: he had stated it to the magistrate, which he admits he might have done, but might be mistaken, and you will determine how far that affects his credit or not. Belief is not evidence of any material circumstance against a man, but as to the ma-

terial fact of the person of the prisoner, both the witnesses are positive.

Gentlemen, the prisoner's defence rests upon character, to which O'Brien has been examined; he states the prisoner to be a man of good character, and extremely prudent; and he describes him as always anxious to keep himself out of the power of disaffected people; and if you believe that, it is a circumstance in favour of the prisoner. And if that shall induce you to entertain a doubt of the testimony of Forbes, and the other witness; or if you shall believe, that while the prisoner was with the party at the moment the oath was administered, he was acting under the fear of death being inflicted upon him by that party, and with no other motive, it is a plain case for the prisoner, and you ought to acquit him. But you will recollect the account given of a consultation among them, in which the prisoner takes a part and advises them not to go to the village of Rathmore, and his advice was taken; because there was a party of yeomen in the place. You will consider, whether that was the conduct of a man acting under the fear of death. If the fact of the gun were positively sworn to, it would be an additional circumstance to rebut the defence endeavoured to be extracted from the cross-examination of Balfour. But I must add, that in all cases where a party sets up the defence of force, he should establish that fact to the thorough conviction of a jury; because the fact charged being proved by positive evidence to the satisfaction of a jury, the defence of force ought to be proved equally to their satisfaction to induce them to rest a verdict upon it. That defence can hold no longer than during the immediate pressure of the force. If after it is removed, the person who was so restrained, goes to a magistrate, and gives him an account of the transaction, it will add much to his defence. But if he rests without disclosing it, and waits till he is prosecuted, his defence will be considerably weakened.

Gentlemen, if upon the whole you believe that the prisoner was one of the party who were at the house in Dunbeggan, while the oath was administered, acting voluntarily there, the indictment is supported, if you think the oath was of the import which is stated. If upon the evidence you shall have any rational doubt, either of the presence of the prisoner at the time of administering the oath, or of the import of the oath, it will be your duty to acquit him. But if you are satisfied that such an oath was administered, and that the prisoner was voluntarily present, it will be your duty to find him guilty.

The jury deliberated for a short time, and returned a verdict—Guilty.

FARREL BLANEY, and THOMAS DONOUGHUE, were indicted, for that they, with many other evil-disposed persons unknown, on the 14th

of November, 1806, at Mullinmore, in the county of Longford, being armed with fire-locks, fire-arms, and other offensive weapons, did wilfully, tumultuously, maliciously, and unlawfully rise, assemble, and appear by night, to the terror of his majesty's subjects, against peace and statute.

A second count charged, that they wilfully, maliciously, and unlawfully, did assume the particular name and denomination of *Threshers*, the same not being a name or denomination, usually assumed by his majesty's subjects upon their lawful occasions, and under that particular name, did wilfully, maliciously, and unlawfully rise, assemble, and appear by night, &c. to the terror of his majesty's subjects, &c. &c.

Prisoners pleaded,—Not Guilty.

The following Jury was sworn :

Robert Shaw,	M. V. Moore,
Andrew Noble,	D. M'Cord,
Robert Beatty,	Alexander Dwyer,
John Wilder,	John Allen,
Francis Holton,	James Wilder,
Claudius Beatty,	William Healy.

Richard Kerr sworn.—Examined by
Mr. *Solicitor-General*.

Where do you live?—At Mullinmore, in this county.

How long have you lived there?—Two years.

In what situation were you before you lived there?—I had served his majesty, and am now on the Chelsea pension, and am a yeoman in captain Bell's corps.

Do you recollect any thing happening at your place on the 13th of November last?—A party of people assembled in a lawless manner, came to my house with grapes, pitchforks, and other weapons.

Was there any knocking at the door?—They began to push and knock at the door, and I thought they would knock it down.

Did they say any thing?—They desired me to open the door: I first threatened them with the law, but they threatened, and then my wife spoke to me, and I was obliged to open the door.

Did you see any persons?—I saw them all assembled.

How many?—By computation, two or three hundred.

What did they do?—I wanted to light a candle, but they would not let me; they compelled me to assemble along with them, and they administered an oath to me.

What was it?—I told them I had no call to the *Threshers*, or to their clergy, but notwithstanding they would not quit me, but swore me not to take any tithe, but from the minister of the parish, and to pay 4s. 4d. an acre, or leave the tithe there, and then they went on with their own minister about marriage and baptism.

Did they force you to take any arms?—They did; my yeomanry fire-lock.

Do you know any of your neighbours, who were forced to go out that night?—I do, Terence Brady, and James Brady.

After you left your house, where did you go to?—To a fort.

How far from your house?—Near half a mile.

On your way to the fort, did you meet any persons?—I saw several joining them.

What hour was this?—Between twelve and two; and there was a rear party behind the main body I was in, compelling the people falling back to keep up.

Did you see any persons with whom you were acquainted join them?—I did.

What are their names?—Farrell Blaney, and Thomas Donoughoe.

When you saw them, were they dressed in any particular manner?—They had some sort of dress.

What sort?—It inclined to be white.

Court.—Could you not see their dress, as well as their faces?—It was their voices I first knew.

Mr. *Solicitor-General*.—Was the white dress outside their other clothes?—They were in white, but whether it was inside or outside I cannot say.

Had they any thing in their hands?—They had clubs.

Did they go with you into the fort?—They were with another party. After we got into the fort, we saw these men coming in, and several others from different quarters.

When they came in, was there any thing said, or was there any difference of opinion?—They were contending what places they would go to.

Did Blaney or Donoughoe take any part in that dispute?—I did not hear them.

Was there any division?—There was, after a long contending; one party was for going one way, and another to another.

Did the prisoners go with one or other?—They did, as I did myself, which I could not avoid, being compelled.

When you first saw them, did you hear any challenge?—I did; they challenged every body.

What answer did these men give?—They answered, "Friends to captain *Thresher*."

Do you recollect hearing any gun fired?—I do, right well.

What happened then?—They all dispersed.

Court.—Where was the gun fired?—They got into a field convenient to a house; there were some men lying on a bank; a shot was fired, and the party immediately dispersed.

Richard Kerr cross-examined by
Mr. *Fleming*.

You saw 200 or 300 people?—By computation.

When you were going towards the fort, you saw the prisoners, and knew them by their voices?—Yes, sir.

You only knew them by their voices?---That is all; you would not know your brother from the darkness of the night.

Is that the only reason you have for swearing to them?---It is.

You saw no more of these men?---I did not.

Were they of the party which went down to the house, where the shot was fired, or of those who went in another direction?---I cannot tell.

You said, you could not tell, whether the white dress was inside or outside their clothes; explain that; if it was under their clothes, how could you see it?---I could, if their breasts were open, or if it was a white waistcoat.

It might have been a white waistcoat?---Perhaps so.

How could you say the prisoners had white dresses, when you did not know their persons?---There was no man but had something white upon him.

Do you mean to say, that the prisoners had something white upon them?---I do.

And yet you do not know, whether it was inside or outside their clothes?---I cannot say; only I saw something white about them.

How long were you in the army?---I was two years in the West Indies, and three years in other places, and I am about three years at home.

Do you know the prisoners well?---I do.

They dug potatoes for you?---They did.

Did you quarrel with them about their wages?---No.

Had you any dispute with them?---I had not.

Was there not a dispute between you?---There was.

Did you owe them any thing?---I did not; I always overpay my men if there be two-pence or three pence over, till they work it out.

But you know nothing of these men being of the party, but from their voices?---Nothing more.

How did you settle the wrangle about their wages?---I owe them nothing.

Court.---Did they claim any money from you?---They did not.

What was the dispute?---About a year ago; but I do not mean to bring it forward; I bear them no malice; it is not worth relating.

Mr. Fleming.---State what it was?---I pay workmen honestly; I paid one of these men thirteen-pence over his due, and he told me he would come back with the change, or do other work; but he did not come, and when I spoke to him afterwards, he abused me.

Which of them was that?---Donoughoe.

Did Blaney work with you?---He did; but there was nothing between us. When I came back the next night, there were thirty men rank and file, who threatened to skiver me.

Court.---You say, you knew these men by

their voices; what did they say?---They answered the challenge.

Did you hear them say any thing, but answer the challenge?---No.

Were any other persons with them at the time?---They were four or five together.

Did they all speak at once?---No; they spoke in twos or threes.

And speaking in that way, could you distinguish the voices of each of these men, so as to swear to them?---I could.

Have you any reason for knowing them, but by their answer to the challenge?---No; I have not.

Did you see their faces?---I did not.

Mr. Baron George.---Gentlemen of the Jury; You see the kind of evidence which is given against the prisoners. The witness did not see their faces, and the only reason he has for charging them is, that when four or five men were challenged together, and they answered, he takes upon him to select the voices of these two men from the others. There is no other circumstance. This is far from being persuasive evidence: it is rather extremely vague, and therefore you can have no doubt in acquitting the prisoners.

Verdict,---Not Guilty.

Peter Morris was put to the bar for judgment, and sentence of death was pronounced upon him.

Thomas Fitzsimons, Patrick Coyle, James Kilbride, and Patrick Coyle, were sentenced to be twice publicly whipped in the town of Granard, and imprisoned six months.

CAVAN.

Monday, December 22nd, 1806.

The Judges opened the Commission this day, and the following Grand Jury was sworn:

Nat. Sneyd, esq.	I. M. Boyle,
Thomas Nesbitt,	Cooper Young,
Henry Clements,	Christopher Badin,
Arthur Fleming,	Luke Magrath,
Charles Coombe,	John Baker,
Charles Coote,	John Adams,
James O'Reilly,	Henry Lanauze,
James Saunderson,	John Tallon,
Thomas Burrowes,	C. Nesbitt,
Oliver Nugent,	Ralph Dawson,
Samuel Moore,	Richard Griffith.
John Richardson,	

Lord Chief Justice *Downes* delivered to them an appropriate charge.

Francis Donoughoe was indicted; for that he, on the 8th of November, 1806, at Mucklagh, in the county of Cavan, did feloniously administer an oath to one George Thomas,

importing to bind him to be of a certain society, under the denomination of *Threshers*, formed for the disturbance of the public peace, "that he should live up to captain *Thresher's* laws; not to take his tithe from a proctor; nor discover of a *Thresher*."—A second count stated the oath to be, "not to inform or give evidence against any brother, associate, or confederate, &c."—A third count, "for causing and procuring an oath to be taken of the import stated in the first count;" and a fourth count, "for causing and procuring to be taken the oath stated in the third against peace and statute.

The prisoner pleaded,---Not Guilty.

JURY.

Henry Grumley,	James Graham,
William Grumley,	Robert Briggs,
John Quigley,	William Cleminger,
John Finlay,	John Black,
Thomas Finlay,	Robert Creighton,
Francis Storey,	Alexander Finlay.

Mr. *Attorney-General* stated the case on behalf of the crown.

George Thomas sworn.---Examined by the *Solicitor-General*.

The witness prevaricated in his testimony, and contradicted his original information sworn before the magistrate; in consequence of which the prisoner was acquitted.

George Thomas was then indicted for wilful and corrupt perjury committed by him in giving evidence upon the former trial. He pleaded,---Not Guilty, was tried, convicted, and sentenced to be transported for seven years.

Counsel for the Crown.

Mr. *Attorney-General* [the right hon. W. C. Plunkett]:

Mr. *Solicitor-General* [C. K. Bushe, esq.]:

Mr. *Sergeant Moore* [afterwards judge of the Common Pleas]:

Mr. *Ridgeway*:

Mr. *Webber* [at Sligo, Castlebar, and Leitrim]:

Mr. *O'Ferrall* [at Longford and Cavan].

Crown Solicitors.

Mr. *Arthur Dunn* [at Sligo, Castlebar, and Leitrim]:

Mr. *James Galbraith* [at Longford and Cavan].

Counsel for the Prisoners.

Mr. *Baker* [at Sligo]:

Mr. *T. Moore* [at Castlebar]:

Mr. *Keon* [at Leitrim]:

Mr. *Fleming* [at Longford and Cavan].

676. Proceedings before the Court of King's Bench Westminster, in the Case of THOMAS PICTON, Esq., sometime Governor and Commander in Chief over and in the Island of Trinidad in the West Indies, on an Indictment for a Misdemeanor, in causing the Torture to be inflicted upon LUISA CALDERON, a free Mulata, in the Island of Trinidad aforesaid: 44—52 GEORGE III. A. D. 1804—1812.*

The indictment† was found by a grand jury of the county of Middlesex, in Hilary Term, 1804; whereupon the defendant (availing himself of the provisions of stat. 42 G. III, c. 85 ‡) put in the following affidavit:—

In the King's-bench.

THE KING

against

THOMAS PICTON, Esquire, for a Misdemeanor.

THOMAS PICTON late of Port of Spain in the island of Trinidad but now of Panton-square in the parish of Saint James Westminster in the county of Middlesex esquire maketh oath and saith that soon after the capture of the said island by his majesty's arms in the year one thousand seven hundred and ninety-seven he this deponent was appointed by sir Ralph Abercombie the then commander of his majesty's troops in the West Indies governor and commander-in-chief over and in the said island of Trinidad And this deponent further saith that the present prosecution is instituted against this deponent in respect of certain proceedings which are alleged to have been by him this deponent as such governor as aforesaid had and taken against Luisa Calderon in the indictment in this prosecution named And that the whole of the proceedings against the said Luisa Calderon were in writing and are matter of record in the said island But this deponent further saith that having no copies of the said records nor being able as he is advised to produce the necessary evidence thereof or to show the laws and

usages of the said island he this deponent is under the necessity of praying a mandamus to examine the honourable St. Hilaire Begorrat esquire the first alcalde or chief magistrate of Port of Spain aforesaid Pedro Ruiz of the same place a Spanish trader and several other material witnesses resident in the said island as to the laws and usages thereof and the aforesaid proceedings against the said Luisa Calderon And is advised and verily believes he this deponent hath a good defence to the said prosecution but that he cannot safely proceed to trial without such proof and testimony as aforesaid.

TH. PICTON.

*Sworn in Court this fourth }
day of May 1804. }*

By the Court.

The Court accordingly issued the following Mandamus:

Easter Term in the forty-fourth year of the reign of king George the Third:

Middlesex—GEORGE the Third by the grace of God of the United Kingdom of Great Britain and Ireland king defender of the faith To the governor or in his absence to the lieutenant-governor of our island of Trinidad in America or in the absence of the said governor and lieutenant governor to John Nihell greeting Whereas on Monday next after the octave of the Purification of the Blessed Virgin Mary in Hilary Term in the forty-fourth year of our reign a certain indictment was found in our court before us, upon the oaths of twelve jurors sworn and charged to inquire for us for the body of our county of Middlesex against Thomas Picton late of Port of Spain in the island of Trinidad and also late of Panton-square in the parish of Saint James Westminster in the county of Middlesex esquire a person employed in our service in a civil and military station out of Great Britain to wit in the island of Trinidad for certain crimes misdemeanors and offences charged to have been committed by him

* Now first collected and published from authentic documents.

† The indictment being set forth below in the mandamus, it is unnecessary to insert it here.

‡ As to this statute see *R. v. Jones*, 8 East 31.

under colour of his said station at Port of Spain in the said island of Trinidad (that is say) for that he the said Thomas Picton on the nineteenth day of December in the forty-second year of our reign and long before was a person employed in our service in a civil and military station out of Great Britain to wit in the island of Trinidad And that he the said Thomas being so employed as aforesaid but unlawfully wickedly and maliciously intending to aggrieve and oppress one Luisa Calderon of port of Spain aforesaid in the said island of Trinidad and to expose the said Luisa to great ignominy and shame and to great anguish of body and mind on the said nineteenth day of December in the year aforesaid at Port of Spain in the island of Trinidad to wit at Westminster in the county of Middlesex with force and arms unlawfully cruelly and inhumanly and without any reasonable or probable cause under colour of his said station did cause and procure the said Luisa (being a young woman under the age of fourteen years in the peace of God and of us then and there being) to be unlawfully cruelly and inhumanly tortured by means of fastening and affixing to the wrists of the said Luisa a certain rope passing through a certain pulley then and there annexed to the ceiling of a certain room in a certain prison in the said island of Trinidad to wit at Westminster aforesaid in the county aforesaid and by such rope raising and pulling up the said Luisa towards the ceiling aforesaid and lowering her again upon a certain sharp spike of wood so that the feet of the said Luisa fell upon the said sharp spike before then affixed to the floor of the said room of the said prison and keeping the said Luisa so suspended and with the weight of her body resting on her said feet on the said spike for a great length of time to wit for the space of half an hour and alternately raising the said Luisa in the manner aforesaid and lowering her again on the said spike and keeping her on the said spike for certain other long spaces of time to wit for the space of twenty minutes at each of such times By means of which said cruel and inhuman torture the hands wrists arms and feet of the said Luisa were cruelly and severely bruised strained and wounded and the said Luisa was thereby rendered sick weak and distempered and her life greatly endangered and hath been ever since rendered weak and sick and distempered To the great injury and oppression of the said Luisa In contempt of us and our laws In manifest violation of the liberties of our subjects To the great perversion of public justice and in breach and violation of the duty of his station aforesaid To the evil example of all others in the like case offending and against our peace our crown and dignity.—[2nd Count] And for that

the said Thomas being so employed in such station as aforesaid unlawfully and maliciously intending to injure and prejudice and oppress the said Luisa as aforesaid afterwards to wit on the said nineteenth day of December in the year aforesaid with force and arms at Port of Spain in the said island of Trinidad to wit at Westminster aforesaid in the county aforesaid unlawfully wickedly and maliciously and without any reasonable or lawful cause whatsoever in and upon the said Luisa in the peace of God and us then and there being did make an assault and her the said Luisa then and there unlawfully cruelly and inhumanly without any lawful cause wound and ill-treat and cruelly and inhumanly torture for a long space of time to wit for the space of twenty minutes so that her life was thereby greatly despaired of and other wrongs to the said Luisa then and there did To the great damage of the said Luisa To the evil example of all others in the like case offending and against our peace our crown and dignity.—[3rd Count] And for that the said Thomas being so employed as aforesaid wickedly and maliciously intending as aforesaid afterwards to wit on the twentieth day of December in the year aforesaid at Port of Spain in the island of Trinidad to wit at Westminster aforesaid in the county aforesaid with force and arms unlawfully cruelly and inhumanly and without any reasonable or probable cause under colour of his said station did cause and procure the said Luisa (being a young woman under the age of fourteen years in the peace of God and of us then and there being) to be unlawfully cruelly and inhumanly tortured by means of fastening and affixing to the wrists of the said Luisa a certain rope passing through a certain pulley then and there annexed to the ceiling of a certain room in a certain prison in the said island of Trinidad to wit at Westminster aforesaid in the county aforesaid and by such rope raising and pulling up the said Luisa towards the ceiling aforesaid and lowering her upon a certain sharp spike of wood so that the feet of the said Luisa fell upon the said sharp spike before then affixed to the floor of the said room of the said prison and keeping the said Luisa so suspended and with the weight of her body resting on her said feet on the said spike for a great length of time to wit for the space of half an hour and alternately raising the said Luisa in the manner aforesaid and lowering her again on the said spike and keeping her on the said spike for certain other long spaces of time to wit for the space of twenty minutes at each of such times by means of which said cruel and inhuman torture the hands wrists arms

and feet of the said Luisa were cruelly and severely bruised strained and wounded and the said Luisa was thereby rendered sick and distempered and her life greatly endangered and hath been ever since rendered weak and sick and distempered To the great injury and oppression of the said Luisa In contempt of us and our laws In manifest violation of the liberties of our subjects To the great perversion of public justice In breach and violation of the duty of his station aforesaid To the evil example of all others in the like case offending and against our peace our Crown and dignity.

—[4th Count] And for that the said Thomas being so employed in such station as aforesaid unlawfully and maliciously intending to injure and prejudice and oppress the said Luisa as aforesaid afterwards to wit on the *twentieth* day of December in the year aforesaid with force and arms at Port of Spain in the said island of Trinidad to wit at Westminster aforesaid in the county aforesaid unlawfully wickedly and maliciously and without any reasonable or lawful cause whatsoever in and upon the said Luisa in the peace of God and us then and there being did make an assault and then and there unlawfully cruelly and inhumanly without lawful cause wound and ill-treat and cruelly and inhumanly torture the said Luisa for a long space of time to wit for the space of twenty minutes so that her life was thereby greatly despaired of and other wrongs to the said Luisa then and there did to the great damage of the said Luisa to the evil example of all others in the like case offending and against our peace our crown and dignity.

—[5th Count] And that for the said Thomas being so employed in such station as aforesaid but unlawfully wickedly and maliciously intending as aforesaid afterwards to wit on the *eighth* day of December in the year aforesaid at Port of Spain in the island of Trinidad aforesaid to wit at Westminster aforesaid in the county aforesaid with force and arms unlawfully cruelly and inhumanly and without any reasonable or lawful cause under colour of his said station did cause and procure the said Luisa in the peace of God and us then and there being to be taken into custody and imprisoned and while in prison to be cruelly and unmercifully tortured and put and kept in irons and fetters fastened and affixed to the said Luisa and to be locked and confined in the stocks and then and there causing the said Luisa to be kept and detained so imprisoned for a long space of time to wit for the space of eight months so that her life was thereby greatly despaired of and other wrongs to the said Luisa then and there did to the great injury oppres-

sion and damage of the said Luisa In contempt of us and our laws To the great perversion of public justice and in breach and violation of the duty of his station aforesaid To the evil example of all others in the like case offending and against our peace our crown and dignity.

—[6th Count] And for that the said Thomas being so employed as aforesaid afterwards to wit on the said *eighth* day of December in the year aforesaid at Port of Spain aforesaid in the island of Trinidad to wit at Westminster aforesaid in the county aforesaid with force and arms unlawfully inhumanly and wickedly and without any reasonable or lawful cause whatsoever in and upon the said Luisa in the peace of God and us then and there being did make an assault and then and there unmercifully and cruelly did bruise beat wound and ill-treat the said Luisa and then and there imprisoned the said Luisa and then and there kept and detained the said Luisa so imprisoned for a long space of time to wit for the space of eight months so that her life was thereby greatly despaired of and other wrongs to the said Luisa then and there did to the great damage of the said Luisa To the evil example of all others in the like case offending and against our peace our crown and dignity.—[7th Count] And for that the said Thomas afterwards to wit on the *nineteenth* day of December in the year aforesaid at the Port of Spain aforesaid in the island of Trinidad to wit at Westminster aforesaid in the county aforesaid with force and arms unjustly and cruelly and without any reasonable or lawful cause upon the said Luisa did make an assault and then and there inhumanly and unmercifully beat bruised wounded ill-treated and tortured the said Luisa so that her life was thereby greatly despaired of and other wrongs to the said Luisa then and there did To the great damage of the said Luisa To the evil example of all others in the like case offending and against our peace our crown and dignity.

And whereas application hath been thereupon made to our said court before us on behalf of the said Thomas Picton the defendant in the said indictment to award a writ of mandamus for the purpose of obtaining and receiving proofs concerning the matters charged in the said indictment pursuant to the statute in such case made and provided And we being willing that due and speedy justice should be done in the premises do command you the said governor of our said island of Trinidad or in your absence the lieutenant-governor of our said island or in the absence of the said governor and lieutenant-governor you

the said John Nihell that you do hold a court session or meeting with all convenient speed for the examination of witnesses and receiving other proofs concerning the matters charged in the said indictment and in the mean time do cause such public notice to be given of the holding of the said court and issue such summons or other process as may be requisite for the attendance of witnesses and do adjourn from time to time as occasion may require pursuant to the statute in such case made and provided And that you and every of you do perform all such other matters and things as by the said statute is required in the premises And how you shall have executed this our writ make known to us at Westminster with all convenient speed at the same time returning to us the examinations and proofs which you or any of you shall have taken by virtue of this our writ closed up and under such seal or seals as by the said statute is required together with this our said writ witness EDWARD LORD ELLENBOROUGH at Westminster the twelfth day of May in the forty-fourth year of our reign.

By the Court—TEMPLER.

By Rule of Court.

The like writ was issued for the examination of witnesses on the part of the prosecution.*

The following return to these writs of Mandamus was presented in Michaelmas Term, 1805.

TRINIDAD.—I humbly certify to his majesty in his court of King's-bench at Westminster that by virtue of two several writs of Mandamus issued out of the said court and hereunto annexed I caused public notice to be given of a court session or meeting to be holden on the sixth day of December eighteen hundred and four at Port of Spain in the said island for the purposes in the said writs mentioned and as I am thereby commanded And that such court session or meeting was accordingly held on the day aforesaid and from thence continued by adjournment from time to time until Friday the sixteenth day of August last when the examinations of the witnesses and other proofs as well on the part of the prosecution as of the defendant Thomas Picton esq. were closed and the court

* The two writs of Mandamus only varied from each other in the statement, that one was for the examination of witnesses on the part of the prosecution, and the other for the defendant. The Mandamus for the defendant having been granted, the other was granted of course.

adjourned *sine die*—And I further certify that on Saturday the twenty-eighth day of August last Mr. Hayes on behalf of the prosecution applied for a further day to examine other witnesses which application I granted and appointed a court to be held on Thursday the fifth day of September instant for that purpose on which said last-mentioned day Mr. Attorney General attended for the said defendant but neither Mr. Hayes nor any of the said witnesses for the prosecution attended Whereupon I made an order that the said witnesses should be produced before me on Friday the sixth day of September instant at ten o'clock in the forenoon to be examined or otherwise that the said examinations and other proofs should be peremptorily and finally closed unless cause should be shown to the contrary on the said fifth day of September And that on the said sixth day of September I attended at the council-chamber in the said island from the hour of ten o'clock till eleven in the forenoon to hear and receive such further evidence as might be adduced on the part of the said prosecution But neither the said Mr. Hayes nor the said witnesses attending and no cause having been shown against the said order and oath being made before me of the service thereof on the said Mr. Hayes I ordered the said examinations and other proofs as well on the part of the said prosecution as of the said defendant to be peremptorily and finally closed and the court to stand adjourned *sine die* And lastly I certify that the said examinations (contained in sixty sheets of parchment and paper) taken before me by George Knox esq. the person sworn duly to take the same and all other proofs matters and things relating thereto are hereunto also annexed Given under my hand and seal at Government House in the said island of Trinidad this seventh day of September in the forty-fifth year of the reign of our sovereign lord George the Third by the grace of God of the united kingdom of Great Britain and Ireland king defender of the faith and in the year of our Lord one thousand eight hundred and five

T. HISLOP Lt. Gov.* (L. S.)

The examinations and proofs annexed to the above certificate of his excellency the lieutenant-governor are as follow :

* Here follow the two rules of the court of King's-bench, the first made on Saturday next after the morrow of the Ascension, and the other on Friday next after the octave of the Holy Trinity, 44 Geo. 3rd, and the two writs of Mandamus issued out of the said court.

TRINIDAD.

The KING against THOMAS PICTON, esq.

At a Court holden at the Council-Chamber in Government House, at Port of Spain in the island of Trinidad, on Thursday the *twenty-second* day of November, in the *forty-fifth* year of the reign of our sovereign lord George the Third by the grace of God of the united kingdom of Great Britain and Ireland king defender of the faith, and in the year of our Lord one thousand eight hundred and four, before his excellency Thomas Hislop esq. brigadier-general in his majesty's service and lieutenant-governor commanding in chief of the said island of Trinidad, by virtue of certain writs of Mandamus issued out of his said majesty's court of King's-bench at Westminster, for the examination of witnesses and for the receiving other proofs, concerning the matters charged in a certain indictment found in his majesty's said court of King's-bench against Thomas Picton esq. on the prosecution of his majesty on the behalf of Luisa Calderon ;

Present

His Excellency the Lieutenant-Governor.

The Court being duly opened by proclamation, and his excellency having been pleased to request George Knox esq. solicitor-general of the island of Tobago to act as the clerk of this court, his commission was read and he was sworn accordingly,

Upon reading a rule made in a certain prosecution commenced in the court of our lord the king before the king himself at Westminster, wherein his majesty on the behalf of Luisa Calderon is the prosecutor and Thomas Picton esquire the defendant, on Saturday next after the morrow of the Ascension of our Lord in the forty-fourth year of king George the Third, and two writs of Mandamus issued in consequence of the said rule directed to the governor of the island of Trinidad or in his absence to the lieutenant-governor of the said island or in the absence of the said governor and lieutenant-governor to John Nihell ; It is ordered that the same be filed in this court and the same were filed accordingly :

And it is further ordered that Thursday the sixth day of December next be appointed for the holding a court for the examination of witnesses, and for the receiving other proofs concerning the matters charged in the said indictment ; and that public notice be given of the holding of the said court at least ten days previous thereto by papers signed by the clerk of the court to be affixed at such

public places where public notices are usually fixed, viz. on the porticoes of Government House, of the Spanish church, and of the court of alcaldes in ordinary, and on the wharf, and by public advertisement in the Trinidad Courant paper.

And it is further ordered that such notice and advertisement shall be printed in the Spanish French and English languages. And it is further ordered that the clerk of the court do issue such subpoenas as may be required by either party to compel the attendance of witnesses for the purpose of their being examined in the said prosecution.

Mr. *Attorney General* (the honourable Archibald Gloster) informed the Court that he had his excellency's special commission to appear as counsel for the defendant, and *Charles Augustus Hayes* esquire barrister at law informed the Court that he was retained as counsel for the prosecution ; It is therefore ordered that all orders papers and notices that issue in this prosecution be served on Mr. Attorney General and Mr. Hayes, and that such service shall be deemed good service on the party.

Adjourned by proclamation unto Thursday the sixth day of December next.

GEORGE KNOX, Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government House, at Port of Spain in the island of Trinidad, on Thursday the *sixth* day of December, in the forty-fifth year of the reign of our sovereign lord George the Third by the grace of God of the united kingdom of Great Britain and Ireland king defender of the faith, and in the year of our Lord one thousand eight hundred and four, before his excellency Thomas Hislop esquire brigadier-general in his majesty's service and lieutenant-governor commanding in chief of the said island of Trinidad, by virtue of certain writs of Mandamus issued out of his said majesty's court of King's-bench at Westminster, for the examination of witnesses and for the receiving other proofs, concerning the matters charged in a certain indictment found in his majesty's said court of King's-bench against Thomas Picton esquire on the prosecution of his said majesty on the behalf of Luisa Calderon ;

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; the proceedings of the last court were read; the exhibit marked A* (hereunto annexed) was produced and ordered to be filed, and the same was filed accordingly.

* See it *infra*.

Matthew Gallagher of Port of Spain printer being called, was duly sworn, and examined as follows:

Question by the Court.—Look at the exhibit A now shown to you; did you make any copies of it?—*Answer.* Yes, five, which were signed by the clerk of the court; and on Saturday the 23rd day of November last, I caused them to be stuck up on the portico of Government-house, on that of the Spanish church, on that of the Alcaldes in Ordinarys-court, and on the wharf; and published it in the *Trinidad Courant* of the 24th day of November last.

MATTHEW GALLAGHER.

James Meany government interpreter being called, was duly sworn, and examined as follows:

Question by the Court.—Look at the exhibit marked A, now shown to you; did you make a faithful translation of the notice contained in it?—*Answer.* I did, and the names *Diego Meany* and *Jacques Meany* are of my hand-writing.

JAMES MEANY.

The said *James Meany* was afterwards appointed and sworn as interpreter of the court.

Upon the motion of *Mr. Attorney General* it is ordered that *Francisco De Castro* government escrivano and keeper of the criminal processes do bring and produce in this court on Wednesday the 12th day of December instant the record of the proceedings had respecting the robbery of *Pedro Ruiz*, together with all processes and papers relating thereto: And it is further ordered that the said *Francisco De Castro* do cause a true copy to be made of the said proceedings processes and papers properly attested and authenticated.

Adjourned by proclamation unto Wednesday the twelfth day of December instant.

GEORGE KNOX, Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain in the island of Trinidad, on Wednesday the *twelfth day of December*, in the forty-fifth year &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of the necessary absence of *Mr. Attorney General* on official duty and the illness of *Mr. Hayes* and the clerk of the court,

Adjourned by proclamation unto Wednesday the twenty-sixth day of December instant.

WILLIAM HOLMES Acting Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government House, at Port of Spain in the Island of Trinidad, on Wednesday the *twenty-sixth day of December*, in the forty-fifth year &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of the necessary absence of *Mr. Attorney General* on official duty and the non-attendance of *Mr. Hayes*,

Adjourned by proclamation unto Monday the seventh day of January next.

GEORGE KNOX Clerk, of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government House, at Port of Spain in the Island of Trinidad, on Monday the *seventh day of January*, in the forty-fifth year &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of the absence of *Mr. Attorney General*,

Adjourned by proclamation unto Tuesday the eighth day January instant.

GEORGE KNOX, Clerk of the Court.

At a Court holden pursuant to adjournment, at the Council Chamber in Government House, at Port of Spain in the island of Trinidad, on Tuesday the *eighth day of January*, in the forty-fifth year &c. [as before.]

Present

His Excellency the Lieutenant Governor

Proclamation being duly made; in consequence of the indisposition of his Excellency,

Adjourned the court by proclamation unto Saturday the twelfth day of January instant

GEORGE KNOX, Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government House, at Port of Spain in the island of Trinidad, on Saturday the *twelfth day of January*, in the forty-fifth year &c. [as before]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; *Francisco De Castro*, government escrivano, and keeper of the criminal processes, brought and produced in court the exhibit, marked B* (hereunto annexed), and

* See it *infra*.

was sworn according to the form of his religion in English, and afterwards in Spanish by means of the interpreter.

Question to the witness by Mr. Attorney General.—Is the exhibit, marked B, the original record of the proceedings had respecting the robbery of Pedro Ruiz?—*Answer.* It is.

The witness was then examined by Mr. Hayes on behalf of the prosecution.

First Question.—Did you attend as escrivano on the prosecution of Carlos Gonzales at the suit of Ruiz?—*Answer.* Yes.

Second Question.—Does the exhibit B contain the whole of the proceedings taken by you as the escrivano in that prosecution?—*Answer.* Yes.

Third Question.—Did you attend Mr. Begorrat in his character as judge at any and at what times, when Luisa Calderon was put on the piquet?—*Answer.* Yes, the time will appear in the proceedings.

Fourth Question.—Turn to the proceedings and state the particular days. [The witness then examined the proceedings, and often recurred to them during his following examination.]—*Answer.* First, on the twenty-third of December, one thousand eight hundred and one, and secondly, on the twenty-fourth of the same month; no other.

Fifth Question.—Did Luisa Calderon, after she had been piqueted the first time, make any and what confession?—*Answer.* When she was on the piquet the first time, she confessed that Carlos Gonzales had stolen the money.

Sixth Question.—Was Luisa Calderon placed on the piquet and examined as a witness, or as an accessory?—*Answer.* Not as a witness, but as an accessory.

Seventh Question.—After her being piqueted a second time, did she make any and what confession?—*Answer.* She repeated what she had said the first time.

Eighth Question.—No further?—*Ans.* Yes, she invoked the Virgin Mary of Carmel several times, and said "senor Carlos Gonzales has the money the same as I told the judge yesterday."

Ninth Question.—Can you state from your own memory, without recurring to the proceedings, the particular days on which Luisa Calderon was piqueted?—*Answer.* Yes.

Tenth Question.—Were they the same days which you have already stated?—*Answer.* The same.

Eleventh Question.—Did Luisa Calderon, on the first time of her being piqueted, appear to undergo a great deal of bodily pain, and did she or did she not faint previous to her being taken down?—*Answer.* I imagine she suffered, because I saw her cry; but I do not remem-

ber whether it was on the first or the second time of her being piqueted that she fainted.

Twelfth Question.—Did she or did she not faint?—*Answer.* She fainted once, but I do not recollect whether it was on the first time or the second time; it appears in the proceedings.

Thirteenth Question.—What do you mean by saying you saw her cry?—*Ans.* I meant to say that she was afflicted and suffered.

Fourteenth Question.—In what way did she manifest her affliction? By tears or by loud cries?—*Answer.* By both; by tears and by loud cries.

Fifteenth Question.—Was she, before or between the examinations, put in the stocks?—*Answer.* No; I do not remember.

Sixteenth Question.—During the whole time of her imprisonment, was she confined in irons? or at any time during her imprisonment?—*Answer.* I am not sure, but believe that during the latter period of her imprisonment, the grillo was taken off.

Question by the Court.—What is the nature of the grillo you mention? describe it.—*Answer.* It was a bar of iron that passed through a post, and the ring of the iron was put round her leg.

Seventeenth Question.—State as nearly as possible the exact length of time that she was on the piquet the second time?—*Answer.* I remember a little more than twenty minutes.

Eighteenth Question.—Do you recollect a watch placed there by Mr. Begorrat for the purpose of ascertaining the time?—*Answer.* Yes.

Nineteenth Question.—Did Mr. Begorrat address himself in threatening language to Luisa Calderon during the time she was on the piquet?—*Answer.* No.

Twentieth Question.—Have you been educated, and have you practised as a Spanish escrivano?—*Answer.* Yes.

Twenty-first Question.—Is it usual to assign to a person criminally prosecuted a defensor?—*Answer.* Agreeably to the quality of the person.

Twenty-second Question.—Who are the persons entitled to a defensor?—*Answer.* The very ignorant, the very miserable by birth, and the very poor.

Twenty-third Question.—While Luisa Calderon underwent the punishment of the piquet in the presence of Mr. Begorrat, had she any defensor assigned to her?—*Answer.* No.

Twenty-fourth Question.—Was Luisa Calderon of the quality of persons entitled to a defensor in a criminal prosecution?—*Answer.* Yes.

Twenty-fifth Question.—Did Don Far-

fan, on being appointed to succeed Mr. Begorrat as the alcalde of the first election, assign any defensor to Luisa Calderon.—*Answer.* I believe not, but I refer to the proceedings.

Twenty-sixth Question.—Will the proceedings show whether a defensor was appointed or not? *Answer.* Yes.

Twenty-seventh Question.—Turn to the part of the proceedings which mentions the appointment.

[The witness turned to the proceedings and pointed out folio 43 b, and folio 44 a, of the exhibit B, which he said contained an act by which Don Farfan orders Luisa Calderon to be notified to appoint a defensor, and which refers to a former act of Mr. Begorrat's, who had ordered the same.]

Twenty-eighth Question.—Is a person under a criminal prosecution from the time of his being committed to prison entitled to a defensor?—*Answer.* It is not essential for a criminal to have a defensor appointed at the time of his imprisonment. If the judge be of opinion that the prisoner, either on account of poverty or minority, ought to have a defensor, then the judge ought to desire him to name one at the time of making his first declaration.

Twenty-ninth Question.—At the time of Luisa Calderon's making her first declaration had she a defensor appointed?—*Answer.* No.

Thirtieth Question.—Was she entitled to a defensor's being present during the time of her being on the piquet?—*Answer.* He ought not to have been present, but he ought to have assisted at her being sworn.

Thirty-first Question.—Was any defensor present at the time of the oath being administered to her?—*Answer.* No.

Thirty-second Question.—Point out the part of the proceedings by which Mr. Begorrat ordered Luisa Calderon to name a defensor.

[The witness pointed out folio 18 b of the exhibit B.]

Thirty-third Question.—What stage of the proceedings is fol. 18 b? does it precede or follow the confession of Luisa Calderon while she was on the piquet?—*Answer.* It precedes it.

Thirty-fourth Question.—During the time of Luisa Calderon's being on the piquet, did Mr. Begorrat put any questions to her?—*Answer.* Yes.

Thirty-fifth Question.—What were the questions so put?—*Answer.* They appear in the proceedings.

Thirty-sixth Question.—Does an order for the torturing of Luisa Calderon form a part of the proceedings?—*Answer.* Yes.

Thirty-seventh Question.—Turn to it.

[The witness pointed out folio 18 a of the exhibit B.]

Thirty-eighth Question.—Are the words "Tho. Picton" of the hand-writing of the defendant?—*Answer.* Yes.

Thirty-ninth Question.—Do you know the age of Luisa Calderon at the time of her being put on the piquet?—*Answer.* No.

Fortieth Question.—Did Luisa Calderon name any person as her defensor?—*Answer.* No, because she had spoken to four persons and none of them would accept of the office.

Forty-first Question.—Was Mr. Bermudas one of those to whom she had spoken?—*Answer.* I do not know.

Forty-second Question.—Do you know on what account those persons refused to defend Luisa Calderon?—*Answer.* No.

The witness was then *cross-examined* by Mr. Attorney-General on the behalf of the Defendant.

Question First.—Does the Exhibit B, delivered by you, contain the whole of the proceedings had respecting the robbery of Pedro Ruiz?—*Answer.* Yes.

Question Second.—Are there any proceedings or circumstances occurring, which ought to have formed part of the Exhibit B, omitted?—*Answer.* Yes.

Question Third.—State what they are?—*Answer.* The appointment of a defensor to the minor, and five days which ought to have elapsed from the day of giving the sentence to the day of inflicting the torment, were omitted.

Question Fourth.—Did you notify to the judge these omissions and informalities previous to the Application of the Question to Luisa Calderon?—*Answer.* I remember to have spoken to him concerning the appointment of a defensor. This is proved by the judge reserving to himself the appointment of one afterwards. I did not mention the other omission.

Question Fifth.—Was it not competent to the judge to put the question to Luisa Calderon, without having appointed her a defensor?—*Answer.* I believe not.

Question Sixth.—Upon what do you found such belief? on practice, or on the books of Spanish law?—*Answer.* On both.

Question Seventh.—Were you ever graduated as an advocate?—*Answer.* No.

Question Eighth.—Is it necessary to be a graduated advocate, in order to practise as a Spanish escrivano?—*Ans.* No.

Question Ninth.—Were there two extra

judicial examinations of Luisa Calderon taken before the tribunal of Mr. Begorrat prior to her being piqueted?—*Answer.* Yes.

Question Tenth.—Are they omitted?—*Answer.* Yes.

Question Eleventh.—Why are they omitted?—*Answer.* In the first place because Mr. Begorrat did not order me to insert them, and in the second place because I did not think it necessary to do so.

Question Twelfth.—Did Mr. Begorrat order you not to insert them?—*Answer.* No.

Question Thirteenth.—Was it not your duty as the escrivano to put every thing relating to the cause on the face of the proceedings?—*Answer.* No.

Question Fourteenth.—Do you recollect the nature of the extrajudicial examinations before mentioned?—*Answer.* Yes, I remember one.

Question Fifteenth.—State it?—*Ans.* It was respecting the fornicating of Luisa Calderon with Carlos Gonzales.

Question Sixteenth.—Are there any extrajudicial examinations of Carlos Gonzales omitted?—*Answer.* Yes.

Question Seventeenth.—What are they, and why were they omitted?—*Answer.* I remember they were concerning the discovery of the robbery, and the fornication aforesaid; I do not know why they were omitted, I cannot charge the fault on the judge, or on myself; because both of us acted so as to bring the affair to as speedy a termination as possible, and to discover the truth.

Question Eighteenth.—What are become of the papers relative to the proceedings omitted?—*Answer.* I do not know.

Question Nineteenth.—Are any declarations of witnesses taken by you, and the interpreter Bermudes omitted?—*Answer.* I do not remember.

Question Twentieth.—Did Luisa Calderon confess her living in a state of fornication with Carlos Gonzales?—*Answer.* Yes.

Question Twenty-first.—Did she not previously deny such fornication or intercourse?—*Answer.* Yes.

Question Twenty-second.—Did not Carlos Gonzales acknowledge his having a criminal intercourse with Luisa Calderon?—*Answer.* Yes; he acknowledged it in prison.

Question Twenty-third.—Had he not previously denied it?—*Answer.* Yes.

Question Twenty-fourth.—Did not Luisa Calderon confess that she had introduced Carlos Gonzales into the house of Pedro Ruiz on the evening of the seventh day of December, one thousand eight hundred and one, between the hours of six

and seven?—*Answer.* I remember she did so.

Question Twenty-fifth.—Did you appear as the escrivano at the time of Luisa Calderon's being put on the piquet?—*Answer.* Yes.

Question Twenty-sixth.—Who besides were present?—*Answer.* Mr. Begorrat, the judge; John Baptisto Vallot, the gaoler; and two alguazils, whom I believe were Raphael Chando and Josef Flores.

Question Twenty-seventh.—Was the defendant Thomas Picton present?—*Ans.* No.

Question Twenty-eighth.—Did the defendant ever give you any orders respecting the torturing of Luisa Calderon?—*Answer.* None but the decree.

Question Twenty-ninth.—Did the defendant interest himself any way on the subject?—*Answer.* Simply as he considered all the affairs of justice.

Question Thirtieth.—Was the piquet on which Luisa Calderon was put, an iron spike or a sharp wooden one?—*Answer.* A wooden one, not pointed.

Question Thirty-first.—Was it round or square on the top, and what was the diameter of the top?—*Answer.* It was round without point, and about an inch in diameter on the top.

Question Thirty-second.—Were her feet or her hands torn or made bloody by the said operation?—*Answer.* No.

Question Thirty-third.—Was any surgeon or other medical man called for by her or others, or was their attendance made necessary by her being so put on the piquet?—*Answer.* No.

Question Thirty-fourth.—You have said that she fainted after either the first or the second time of her being put on the piquet; did such fainting appear to you to be real or affected?—*Answer.* By the way that she conducted herself during the whole of the proceedings, it may be that there was some affectation in her fainting; but I cannot say certainly.

Question Thirty-fifth.—Did not Mr. Begorrat, the attending judge, on the appearance of her fainting, immediately order her to be taken down?—*Ans.* Yes; and gave her some wine and water with his own hands, and she immediately recovered.

On account of the lateness of the hour, the Court then adjourned by proclamation unto Thursday the seventeenth day of January instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government House, at Port of Spain in the island of Trinidad, on Thursday the *seventeenth day of January*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; the continuation of the cross-examination of Francisco De Castro was postponed unto the next court day on account of his indisposition.

Maria Calderon was then called by Mr. Hayes on behalf of the prosecution.

Mr. *Attorney General* having demanded of her whether she was free, and she having answered that she was born free at St. Phillippe in the province of Port Cavallo, she was duly sworn according to the form of her religion, first in English and afterwards in Spanish by means of the interpreter.

The witness was then examined by Mr. Hayes on behalf of the prosecution.

Question First.—Are you the mother of Luisa Calderon?—*Answer.* Yes, I am her mother; I was delivered of her in this island, and bred her up.

Question Second.—State the day and year of the birth of Luisa Calderon as correctly as you can.—*Answer.* I do not rightly remember when she was born, but what I can say is, that she was born in the month of August on St. Louis's day and she was ten years old when she was in prison.

Question Third.—Was Luisa Calderon more than ten years old when she was in prison?—*Answer.* No, rather less than more.

Question Fourth.—Is Luisa Calderon a christian?—*Answer.* She is; she was christened in this island, and her godfather is still alive.

Question Fifth.—State, as correctly as you can, what space of time intervened between her birth and her baptism?—*Answer.* Eight days.

Question Sixth.—Were you present at the time of Luisa Calderon's being apprehended and carried before the defendant Thomas Picton on a charge of being concerned in the robbery of Petro Ruiz?—*Answer.* I was present when Pedro Ruiz carried Luisa Calderon to general Picton, and afterwards he came for me.

Question Seventh.—State what passed in the presence of the defendant on the examination of Luisa Calderon.—*Answer.* The night that Pedro Ruiz carried Luisa Calderon before Senor Picton, I was standing down below the window of governor Picton's house, hearing the words that Luisa Calderon said, the governor being below in consequence of having just arrived from his walk.

Question Eighth.—Did Luisa afterwards go up stairs with you or was she examined in the hall below?—*Answer.* It was below that governor Picton examined my daughter.

Question Ninth.—Did the governor appear extremely angry at the time and did he threaten Luisa? State as nearly as possible the words that the governor made use of at the time.—*Answer.* Yes; he appeared angry, and threatened Luisa. When my daughter was telling him that she was innocent, as every body knew, that every afternoon at six o'clock she used to go to her mother's, he threatened her, and told her that he would send her to the battery, and that he would draw the money from her.

Question Tenth.—Did Luisa Calderon on this examination make any confession of being concerned in the robbery of Petro Ruiz?—*Answer.* No, she said she never knew any thing about it.

Question Eleventh.—Was she sent to prison the night of her said examination, or when afterwards, and by whom?—*Ans.* The very night of her examination; I know, that from governor Picton's house she went to gaol, and I with her.

Question Twelfth.—Was any other magistrate than governor Picton present?—*Answer.* No, nobody but him and the girl with whom he lived.

Question Thirteenth.—Did you hear governor Picton give the order for Luisa Calderon to be sent to prison?—*Answer.* He called the sentry in and four soldiers of the guard.

Question Fourteenth.—Was Luisa Calderon escorted by the said guard to the gaol?—*Answer.* Yes, and they delivered her to the gaoler.

Question Fifteenth.—Were you in prison at the same time as your daughter?—*Answer.* Yes.

Question Sixteenth.—Were you and your daughter confined in the same part of the prison?—*Answer.* Yes; we were.

Question Seventeenth.—In what manner were you and your daughter confined?—*Answer.* The first night we were at large about the gaol, but the second night Luisa was locked up under two keys, and I was carried up stairs.

Question Eighteenth.—Did you see Luisa while locking up, or when locked up?—*Answer.* Yes, I saw her when she was about to be locked up, but I did not see her after she was so.

Question Nineteenth.—Did you ever afterwards see the place in which your daughter had been locked up?—*Answer.* No, I saw the place where she was tortured but not that in which she was locked up.

Question Twentieth.—Were you present at any time when Luisa Calderon was tortured?—*Answer.* No, I was not present; I was in a room below.

Question Twenty-first.—Was the room below immediately under the place of torture?—*Answer.* Yes; immediately.

Question Twenty-second.—Is the place of torture in the prison?—*Answer.* Yes, it was; but I do not know where it is now.

Question Twenty-third.—How long were you in prison, and did any punishment or trial ensue?—*Answer.* I was in prison one month and eight days: no trial or punishment; nothing but a declaration which Mr. Begorrat took from me.

Question Twenty-fourth.—Did you at any time during your imprisonment hear the cries of your daughter?—*Answer.* Yes.

Question Twenty-fifth.—Do you know of your own knowledge the occasion of those cries?—*Answer.* I cannot say from myself.

Question Twenty-sixth.—Have you heard the cries of your daughter more times than one?—*Answer.* Three times.

Question Twenty-seventh.—Are you so well acquainted with your daughter's voice, as to know that those cries proceeded from her?—*Answer.* Yes, because nobody else was in the place; I am very well acquainted with my daughter's voice, and if a thousand persons had been in the prison I could have distinguished it.

Question Twenty-eighth.—Did they appear to you to be the cries of a person under great suffering?—*Answer.* Yes.

Question Twenty-ninth.—Did you see your daughter shortly after the times of hearing any of those cries?—*Answer.* No.

Question Thirtieth.—After your daughter had been locked up as you have stated, were you either during the time you were in prison or after your discharge permitted to see her?—*Answer.* No: once Luisa being sick, sent for me to come and perform some trifling things for her, and the alcalde Don Farfan would not give me permission.

Question Thirty-first.—How long was it from the time of the first imprisonment of Luisa to that of your first interview with her?—*Answer.* About four months.

Question Thirty-second.—Was Luisa then in prison or discharged?—*Answer.* She was in prison.

Question Thirty-third.—Describe the place in the prison wherein you saw Luisa confined at the first interview.—

Answer. Don Francisco de Farfan being the alcalde sent for me by an alguazil, and told me to go to the battery to take the declaration of my daughter. This was the first time I saw her: I found her attached to a bar of iron with four irons on her feet; and Luisa told me that Don Francisco Farfan had ordered these irons to be put on.

Question Thirty-fourth.—Was Luisa, at the time you saw her, in sickness or in health?—*Answer.* She was sick.

Question Thirty-fifth.—Can you state from what cause that sickness proceeded?—*Answer.* It appeared to proceed from her imprisonment and the irons.

Question Thirty-sixth.—When you saw her, was she with other prisoners, or in solitary confinement?—*Answer.* In solitary confinement.

Question Thirty-seventh.—Did you examine her at the time, and had she about her any visible marks of violence?—*Ans.* Yes I did, and found her wrist sore to the touch.

Question Thirty-eighth.—Was it discoloured or swollen?—*Answer.* It was black and blue, morado.

Question Thirty-ninth.—How long was it from the time of Luisa's first commitment to the time of her discharge?—*Ans.* Eight months and some days.

Question Fortieth.—Was you at any time shown a written order from governor Picton for the imprisonment of Luisa?—*Answer.* No.

The Witness was then cross-examined by Mr. Attorney General on behalf of the Defendant.

Question First.—What is your age?—*Answer.* Forty years.

Question Second.—How do you know that you are forty years old?—*Answer.* I know it because when I came from my country I had a certificate of baptism.

Question Third.—Can you read or write?—*Answer.* No.

Question Fourth.—Do you know the nature of an oath?—*Answer.* Yes.

Question Fifth.—State it?—*Answer.* Not to deny a word or tell a lie, but always to speak the truth.

Question Sixth.—On what day of the month, and in what year, and in what part of the island was Luisa born?—*Ans.* I do not know what year; but it was on St. Louis day, I believe, the twenty-ninth of August, in Port of Spain.

Question Seventh.—Was the day of your daughter's birth registered in any parish?—*Answer.* It can't but be registered in the church.

Question Eighth.—Did you ever see the register of your daughter's birth?—*Answer.* Don Pedro Vargas showed me a copy of the register which had been given to him by the curate.

Question Ninth.—Who is Don Pedro Vargas?—*Answer.* He was the linguist of the governor, who carried away my daughter.

Question Tenth.—Have you any copy of the register?—*Answer.* No, because they are too dear; I had a memorandum of it in my house, but I have lost it.

Question Eleventh.—On what day of the month, and in what year, was your daughter christened?—*Answer.* I do not know;

I know my daughter's age by the day of St. Louis.

Question Twelfth.—How old is your daughter this day?—*Answer.* Between fifteen and sixteen.

Question Thirteenth.—Have you any other daughter besides Luisa?—*Answer.* Another which I brought from my country.

Question Fourteenth.—What is her name?—*Answer.*—Catalina Estredilla.

Question Fifteenth.—Is she not some times called Benancia?—*Answer.* No; Benancia is another, who is twenty-three years old.

Question Sixteenth.—How many years is Benancia older than Luisa?—*Answer.* Benancia is twenty-three years old, and Luisa between fifteen and sixteen.

Question Seventeenth.—Which is the eldest, Catalina or Luisa?—*Answer.* Catalina is eldest of all, and Luisa the youngest.

Question Eighteenth.—What is the difference between the ages of Catalina and Luisa?—*Answer.* There is a great difference, because Catalina is twenty-six years old, and Luisa is the youngest of my children.

Question Nineteenth.—Did you keep any family register of the birth and christenings of your children?—*Answer.* Their godfathers used to make a memorandum of them.

Question Twentieth.—Who was their godfather, and what is become of the memorandum?—*Answer.* Their godfathers are all in my country except that of Luisa. I do not know what is become of the memoranda: in this country very little use of such things are made.

Question Twenty-first.—How then came Luisa's memorandum to be preserved?—*Answer.* The curate can answer.

Question Twenty-second.—Do you mean to say that the curate has the register of Luisa's birth?—*Answer.* As she was christened here, he must have it in the register.

Question Twenty-third.—Have you any certificate of the day of your own birth?—*Answer.* I have sent it to my country to have it renewed, because it was very old.

Question Twenty-fourth.—Did you ever declare your own age before any tribunal in any examination in this island?—*Ans.* Never, because I have never been asked.

Question Twenty-fifth.—Do you know why your daughter Luisa was sent to gaol?—*Answer.* Because Don Ruiz charged her with a robbery which she never committed.

Question Twenty-sixth.—Before Luisa was sent to gaol, was she not living with Pedro Ruiz as his mistress?—*Answer.* Yes; on a promise of marriage,

Question Twenty-seventh.—Upon the said promise did they cohabit together as man and wife.—*Answer.* Yes, they lived together.

Question Twenty-eighth.—Were you ever married?—*Answer.* Yes.

Question Twenty-ninth.—How long had Luisa and Ruiz cohabited together before Luisa was charged with the robbery?—*Answer.* Two years and five months.

Question Thirtieth.—Had they cohabited together as man and wife during the said two years and five months?—*Answer.* Yes; during the whole time.

The witness was then re-examined by Mr. Hayes on behalf of the prosecution.

Question First.—Do you know how long it is from the time of Luisa's being imprisoned to the present day?—*Answer.* Before she went away she was one year free, and now it is three since she was discharged.

Question Second.—If your daughter was only ten years old when she was in prison, and as only three years have elapsed since then, how can she be between fifteen and sixteen now?—*Answer.* No, I said that Luisa had fourteen years.

Question Third.—Do you mean to say that Luisa was fourteen years old at the time of her imprisonment?—*Answer.* Yes, not quite completed, going to it.

MARIA CALDERON + her mark.

JAMES MEANY, Interpreter.

The Court then adjourned by proclamation on account of the lateness of the hour unto Tuesday the twenty-second day of January instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-Chamber in Government House, at Port of Spain in the island of Trinidad, on Tuesday the twenty second day of January, in the forty-fifth year &c. [as before]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; Francisco de Castro government escribano and keeper of the criminal processes was called by Mr. Attorney-General in continuation of his cross-examination on behalf of the defendant.

On the appearing of the said Francisco de Castro, Mr. Hayes, on the part of the prosecution, objected to the continuation of the cross-examination of the said Castro on behalf of the defendant, and moved, that the whole of the foregoing evidence of the said Castro be expunged, and produced the exhibit marked C*

* See it *infra*.

(hereunto annexed) in support of his objection.

The exhibit marked C, being duly filed and read, the Court put the following question to the said Francisco de Castro, and he was duly sworn accordingly.

Question by the Court.—Do you mean to say that the answers given by you in your foregoing examination and cross-examination were not the true answers to the questions then proposed?—*Answer.* I do not mean to say so.

The Court postponed the decision on the said objection on the part of the prosecution to the next court day, and on account of the sudden indisposition of Mr. Hayes, adjourned by proclamation unto Wednesday, the twenty-third day of January, instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-Chamber in Government-house, at Port of Spain in the island of Trinidad, on Wednesday the *twenty-third day of January*, in the forty-fifth year, &c. [as before]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made Francisco de Castro government escrivano was called; and in his presence *His excellency* gave the following decision on the objection made by Mr. Hayes on behalf of the prosecution against the continuation of the cross-examination of the said Francisco de Castro by Mr. *Attorney General* on behalf of the defendant.

Having, since the adjournment of yesterday, attentively read and considered the several circumstances stated by Francisco de Castro, in the affidavit which he swore to in court, and which was read and filed; I should have been led to suppose, that by the mention he makes of the apprehension he was under during his examination on the twelfth instant, which had led him in consequence to protest against the answers which he gave to the questions put to him in court on that day, that his conscience had upbraided him with having in some instances given testimony not founded in truth; but he having been questioned to this point yesterday, answered, that such was not the case, nor did he mean to convey any such idea by the protest, or by the affidavit he had made. It would therefore seem that the witness felt conscious, that having withheld information which he was enabled to give, he had not fulfilled the oath he had taken before the Court, by which he is bound not only to give the truth, but the whole truth, which it remains still for him to do, in order to acquit himself of the serious obligation imposed upon

him by the solemn oath he has taken. I do not find that he can in any manner possibly evade this point of duty towards God without rendering himself criminal in his eyes; and I must therefore insist and require of him to adhere in the most scrupulous and conscientious manner to the oath he has taken, by speaking the truth and the whole truth in the answers he shall give to such questions as shall be hereafter put to him relative to the matters charged in the indictment now before the Court; and in so doing, I will pledge myself to afford him the utmost protection and security, both for his person and property, being fully determined to enforce the utmost rigour of the law against any person or persons, who could or should be wicked enough now or at any future period, by any act or deed, to hurt or in any wise maltreat him either in person or property for so having done. I must now require him to mention to the Court, on what circumstances he founds his apprehensions, as stated in the affidavit: And I must further desire he will mention the names of the persons against whom he alledges so serious a charge; and to describe how, when, and where he was so alarmed by the menaces which now make him dread the consequence of fulfilling the oath he has taken. It may however be necessary to inform him, that he cannot, under the alledged apprehension, be permitted to withhold his evidence; it being only on the score of infamy, insanity or interest, that his evidence can be deemed incompetent; and it is to be presumed he does not mean to allow the most distant idea that either infamy or insanity can in any manner be imputed to him, or that he is at all influenced by any interest but solely impelled by an earnest desire and intention of relating the truth. It is also proper for him to know, that no witness can refuse to answer to any question but to such as might criminate himself.

And it may not be improper also to observe, that any person who shall dissuade, or but endeavour to dissuade another from giving evidence, is subject to fine and imprisonment. The necessity of implicit obedience to the mandamus under which authority this Court is assembled is indispensable, and it is my duty to require the same from every one who is called to give evidence before it, exhorting them to speak without fear or apprehension, under the firmest reliance and assurance of the utmost protection, which either the laws can insure, or that it may be in my power to afford.

The said *Francisco de Castro* was then duly sworn, and the Interpreter translated to him the foregoing decision of his Excellency.

Question by the Court.—Did you perfectly understand that part of the decision given by me, which relates to the protection I promise you, and which the law affords you?—*Answer.* Yes, I understood it.

Question Second, by the Court.—On what circumstances do you found the apprehensions stated in the affidavit?—

Answer. Those circumstances I reserve as stated in my affidavit to which I refer.

Question Third, by the Court.—Explain those circumstances?—*Answer.* I cannot mention for the reasons before given.

Question Fourth, by the Court.—As it is necessary for the support of justice to require you to mention these circumstances, I require you to do so on the pledge of protection you have received?—

Answer. I have no doubt of your excellency's protection, but it is morally impossible for me to state them here, but in the Court of London.

The cross-examination of the witness on behalf of the defendant was then continued by Mr. Attorney General.

Question Thirty-sixth.—Do you wish any part of your examination or cross-examination to be now read over to you?—*Answer.* No.

Question Thirty-seventh.—Do you recollect both sufficiently?—*Answer.* I can't exactly remember all they contain.

Question Thirty-eighth.—Do you wish to explain or alter any part of either?—*Answer.* No.

Question Thirty-ninth.—In what part of such examination or cross-examination have you erred from terror or apprehension of others?—*Answer.* I cannot answer.

Question Fortieth.—Why cannot you answer?—*Answer.* For the reasons given in my affidavit, and it is not to be understood from contumacy or contempt.

Question Forty-first.—Who composed or prepared the said affidavit?—*Answer.* Mr. Hayes.

Question Forty-second.—Was it first written in Spanish by you, or was it first put in English?—*Answer.* First in English.

Question Forty-third.—Did you translate, and then copy it?—*Answer.* I do not understand English.

Question Forty-fourth.—Who translated it from the English into Spanish?—*Answer.* Mr. Meany.

Question Forty-fifth.—Was the Spanish copy brought into court in your hand-writing or not?—*Answer.* In my own hand-writing.

Question Forty-sixth.—Was it copied from the translation by Mr. Meany?—*Answer.* Yes.

Question Forty-seventh.—Did you first suggest the propriety or necessity of such

an affidavit, or was it suggested to you by any one?—*Answer.* I first suggested it.

Question Forty-eighth.—Did you give any heads or memoranda by which the affidavit was to be drawn?—*Answer.* I gave the heads, but gave no memoranda.

Question Forty-ninth.—Were the heads in writing?—*Answer.* Verbally.

Question Fiftieth.—Were they given before the Court of the 12th instant, or after the Court broke up?—*Answer.* Afterwards.

Question Fifty-first.—Did you offer to swear to such affidavit before any and what other judge?—*Answer.* Before judge Nihell, believing he had competent authority.

Question Fifty-second.—Did he admit you to swear to it?—*Answer.* No.

Question Fifty-third.—Why do you not name in the affidavit the persons of whom you say you have such apprehensions?—*Answer.* For the reasons mentioned in the affidavit.

Question Fifty-fourth.—I call on you to name the persons alluded to in that affidavit?—*Answer.* It is impossible for me to name them, though I mean no contumacy or contempt.

Question Fifty-fifth.—Do you mean peremptorily to refuse to answer to the last question?—*Answer.* In exertion of my natural rights, it is impossible for me to answer to the said question for the reasons stated in the affidavit.

Question Fifty-sixth.—After the piquet had been applied to Luisa Calderon, was she confronted with Carlos Gonzales, and where?—*Answer.* Agreeably to what I have said in my affidavit to go to London to give my testimony, I refer to it for any further answer.

Question by the Court.—Do you recollect that by persisting in refusing to answer to that question you commit perjury? having sworn to tell the truth, the whole truth, and nothing but the truth?—*Answer.* I do not understand that I am perjured by refusing to give any answers in this cause, and implore your excellency's protection.

Question Second, by the Court.—Do you know the nature of the oath you have taken, and the duty it imposes on you?—*Answer.* Yes, I know it.

Question Third, by the Court.—Explain it?—*Answer.* To tell the truth in all that I can answer.

Question Fourth, by the Court.—Is your evidence called to no particular point?—*Answer.* In the cause of Luisa Calderon.

Question Fifth, by the Court.—You are required by your oath to tell the whole truth in any thing that relates to the said indictment, and by not doing so you commit perjury.—*Answer.* I have already represented the reasons for not

answering, and cannot comprehend that I can commit the foul sin of perjury by refusing to answer, because I swore in the affidavit to tell the truth, and the affidavit was admitted.

Question Sixth, by the Court.—Do you mean to persist in refusing to answer any questions whatever relating to the said indictment?—*Answer.* Yes, for the reasons mentioned in the affidavit.

Question Seventh, by the Court.—In persisting in this manner, not to answer any further questions proposed to you relative to the indictment, it will be my duty to commit you to gaol; and I wish you to consider well before hand; as your evidence appears to be very material, and as it is not impossible but that death may prevent your being examined in Westminster-hall, I am more particularly obliged to make you give your testimony in this court.—*Answer.* I persist in the affidavit I have given in; if your excellency thinks fit to imprison me in the gaol, I beg you to consider that I am the senior regidor of the honourable board of Cavildo by his Catholic Majesty, and therefore enjoy privilege.

Question Eighth, by the Court.—Produce your commission, and the king of Spain's approval of it?—*Answer.* I never received the said king's approbation, but I can prove that I applied for it.

The Court then ordered the said Francisco de Castro to be committed to the common gaol of this island until further order, for a contempt of this Court, in refusing to answer any further questions relative to the matters charged in the said indictment:

And he was committed accordingly.

The Court then adjourned by proclamation unto Monday the twenty-eighth day of January instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the island of Trinidad, on Monday the *twenty-eighth day of January*, in the forty-fifth year &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made, it is ordered that the said Francisco de Castro be brought up before this Court on Thursday the thirty-first day of January instant and then produce the certified copy of the exhibit marked B before directed.

On account of the indisposition of Mr. Hayes, the Court then adjourned by proclamation unto Thursday the thirty-first day of January instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government house, at Port of Spain in the island of Trinidad, on Thursday, the *thirty-first day of January*, in the forty-fifth year &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made the said Francisco de Castro was brought up before this Court:

It is ordered that the said Francisco de Castro be discharged from the commitment aforesaid, and he was immediately discharged accordingly

The said Francisco de Castro then put in the exhibit marked D* hereunto annexed which was filed and read. And his excellency was pleased to declare that the said Francisco de Castro could only be examined *vidé voce* in court as the act directs, but that he might have a copy of the evidence he had given when his examination should be finished.

The oath was then duly tendered to the said Francisco de Castro, but he refused to take it in the presence of the honourable St. Hilaire Begorrat who was therefore requested to withdraw, and he withdrew accordingly. The said Francisco de Castro was then duly sworn.

The Cross-examination of the said witness was then continued by Mr. Attorney General on behalf of the Defendant.

Question Fifty-sixth.—After the piquet had been applied to Luisa Calderon, was she confronted with Carlos Gonzales, and where?—*Answer.* I remember that she was confronted with him, and believe it was in the gaol-room. I refer to the proceedings. I also remember another verbal examination in the tribunal of Mr. Begorrat.

Question Fifty-seventh.—Were they confronted at Pedro Ruiz's house?—*Answer.* I also remember several questions were put to both at Pedro Ruiz's house, at the time of the examination of the house, in the presence of several witnesses.

Question Fifty-eighth.—Was it after the first or second piquet?—*Answer.* I cannot recollect, it may appear in the proceedings.

Question Fifty-ninth.—Was it before or after the first piquet?—*Answer.* I do not remember.

Question Sixtieth.—When Luisa Calderon went to Pedro Ruiz's house, did she walk, or was she carried?—*Answer.* She walked.

Question Sixty-first.—What is the

distance from the prison to Pedro Ruiz's house?—*Answer.* Three cross-streets, I believe.

Question Sixty-second.—Did Luisa Calderon walk, or was she carried back to the prison?—*Answer.* She walked.

Question Sixty-third.—How long did she stay at Pedro Ruiz's house?—*Answer.* About an hour, I believe.

Question Sixty-fourth.—Is the confrontation of Luisa Calderon with Carlos Gonzales in the proceedings?—*Answer.* Which does Mr. Attorney mean?

Question Sixty-fifth.—The one at Pedro Ruiz's house?—*Answer.* I believe it is not in the proceedings, as several verbal questions were put to Luisa Calderon by the alcalde.

Question Sixty-sixth.—Do you recollect any of them?—*Answer.* Perhaps by taking time I may.

Question Sixty-seventh.—Do you recollect any now?—*Answer.* I am not capable of recollecting any.

Question Sixty-eighth.—After the conquest of this island by Great Britain, what tribunal of the colony supplied the place of the royal audience of Carracoas?—*Answer.* His excellency the governor.

Question Sixty-ninth.—Was the application of the piquet to Luisa Calderon originally suggested by the defendant the governor, or by the alcalde Mr. Begorrat?—*Answer.* By the latter.

Question Seventieth.—Was it of the competence of the alcalde Mr. Begorrat, and of his tribunal to apply the question or torture for such a crime as that with which Luisa Calderon was charged and committed for?—*Answer.* No, not by himself alone, but with the authority of government.

Question Seventy-first.—Had a defensor been present at the application of the torture to Luisa Calderon, could he have stopped the proceedings, or remonstrated against their continuance?—*Answer.* He might have stopped the execution, because it admits of appeal.

Question Seventy-second.—Do you mean to say, that the defensor of criminals can control the proceedings of the tribunals, or stop their decrees?—*Answer.* They may appeal.

Question Seventy-third.—To whom would the appeal have been in this instance?—*Answer.* To the governor himself, and as far as London, as it is a privileged cause.

Question Seventy-fourth.—Does or does not the Spanish law confine the defensor of prisoners to the judicial examination, and not to the torture or question ordered by, and in the presence of the judge?—*Answer.* As I am no lawyer, I cannot give any answer to the question.

Question Seventy-fifth.—Had not Luisa

Calderon a defensor, when the Spanish law allowed her one?—*Answer.* No.

Question Seventy-sixth.—Did or did not Mr. Begorrat, the alcalde, reserve to himself the power of naming a defensor for her?—*Answer.* Yes; it appears in the proceedings.

Question Seventy-seventh.—Was this before or after the piqueting?—*Answer.* Before.

Question Seventy-eighth.—As you speak in your answer to the twenty-seventh question in your examination by Mr. Hayes on behalf of the prosecution, of an auto of Mr. Farfan's referring to an auto of Mr. Begorrat's, which had ordered a defensor to Luisa Calderon, where is that auto?—*Answer.* It ought to be in the proceedings.

Question Seventy-ninth.—Turn to it.

The witness then examined the Exhibit B, and pointed out fol. 17 b.

Question Eightieth.—By whom were the underscores that appear there made?—*Answer.* I do not know.

The witness then corrected his former Answer, and showed fol. 18, b.

Question Eighty-first.—You say in your answer to the twenty-ninth question on your cross-examination by me, that the defendant simply interested himself with respect to Luisa Calderon, as he considered all the affairs of justice. Do you mean by that, that the defendant interfered more or less than he usually did in other matters brought before him?—*Answer.* He interfered in the way he usually did in all others.

Question Eighty-second.—Was not the defendant always open to the application of rich and poor at all hours?—*Answer.* Yes.

Question by the Court.—Do you believe that the defendant acted in the whole of the prosecution respecting the robbery of Pedro Ruiz with impartiality, and without being influenced by any other consideration whatsoever, than the attainment of the ends of justice?—*Ans.* Yes. I believe so.

Question Eighty-third.—Did not the defendant administer justice generally as far as his knowledge went in the Spanish law?—*Answer.* I believe so.

Question Eighty-fourth.—You say in your answer to the thirty-ninth question in your examination on the part of the prosecution, that you did not know the age of Luisa Calderon at the time of her being put on the piquet; recollect yourself, and say if you can what was her age?—*Answer.* I remember having declared that she was fifteen, either a little more or less, if I remember right.

The last question was repeated to the witness at the desire of Mr. Hayes.

Second Answer.—I cannot say with certainty, but I think I answered to the question of Mr. Hayes, that Luisa Calderon was fifteen at the time of her being put on the piquet.

Question Eighty-fifth.—Is it not the form of the Spanish law, at the head of the examination of any criminal, to name the prisoner, the place of his birth, his profession and his age?—*Answer.* Yes, it is.

Question Eighty-sixth.—Was this form complied with in the case of Luisa Calderon?—*Answer.* I do not remember.

Question Eighty-seventh.—Turn to the proceedings and see what was her age declared to be therein?—The witness pointed out the examination of Luisa Calderon, but observed, that her age did not appear. He then pointed out fol. 63 a, where he said Juan Bermudes, the defensor of Luisa Calderon, declares in his escrito, that Luisa Calderon was a minor, and fol. 64 a, wherein he declares that she was fourteen years old.

Question Eighty-eighth.—Was Juan Bermudes a defensor allowed by the tribunal of Luisa Calderon?—*Answer.* I believe so.

Question Eighty-ninth.—As you often saw Luisa Calderon at the time of her imprisonment, what did her age appear to you to be?—*Answer.* I always thought her fifteen, either a little more or less.

Question Ninetieth.—Was she a woman grown at that time, and did her bosom exhibit signs of puberty?—*Answer.* I took her for a woman.

Question Ninety-first.—At the time of her being piqueted, did she protest or object against such punishment on account of her want of age?—*Answer.* No.

Question Ninety-second.—If she had done so, would it not have been your duty as the escrivano to have recorded it?—*Answer.* If the judge had ordered it.

Question Ninety-third.—Did Luisa Calderon, or her defensor ever, during the whole course of the proceeding, plead her want of age, as an excuse or exemption from torture or punishment?—*Answer.* She represented nothing concerning her age; but after the piquet had been applied, the defensor that was appointed to her, remonstrated, as appears in folio 64 a of the exhibit B.

Question Ninety-fourth.—What is the age of puberty by the Spanish law?—*Ans.* Twelve years.

Question Ninety-fifth.—Did Luisa Calderon, to your knowledge, live in a state of concubinage with Pedro Ruiz?—*Ans.* I only know so from having heard so.

Question Ninety-sixth.—Do you know

how long she had lived with Pedro Ruiz?—*Answer.* I do not know.

Question Ninety-seventh.—Are all the proceedings in the exhibit B in your hand-writing?—*Answer.* Not all.

Question Ninety-eighth.—Are any in the hand-writing of Dionesio Woranixa your clerk?—*Answer.* I believe there are.

Question Ninety-ninth.—Why were they not entered in your own hand-writing?—*Answer.* Because it is always the case in all proceedings.

Question One Hundredth.—Does not the Spanish law require that the escrivano should enter all the proceedings himself?

—*Answer.* It does, but the contrary is the practice.

*Question One Hundred and Second.**—Did you take any and what rough examinations, and what is become of them?—*Answer.* I do not remember having taken any.

Question One Hundred and Third.—How long have you practised as an escrivano?—*Answer.* More than eighteen years.

Question One Hundred and Fourth.—Is an alcalde, such as Mr. Begorrat was on the trial of Luisa Calderon, obliged to be graduated as an advocate before he could exercise that function or office?—*Answer.* No alcalde in this colony has ever been obliged to be graduated as an advocate.

Question One Hundred and Fifth.—Are the alcaldes of the first and second election, now in office, graduated as advocates?—*Answer.* No.

Question One Hundred and Sixth.—Is it not an elective office, and by whom?—*Answer.* Elective by the cabildo, and to be confirmed by his excellency.

Question One Hundred and Seventh.—Have not those officers been generally planters, or persons living in society without being versed or skilled in the Spanish laws? *Answer.* Always.

Question One Hundred and Eighth.—Can an alcalde, when elected, refuse the office?—*Answer.* Yes, subject to fine.

Question One Hundred and Ninth.—What was Mr. Begorrat's employment, before he was judge?—*Answer.* Planter.

Question One Hundred and Tenth.—Was he ever graduated as an advocate?—*Answer.* No.

Question One Hundred and Eleventh.—Was there in this island at the time of Luisa Calderon's trial any graduated advocate with whom Mr. Begorrat as alcalde could consult or advise?—*Answer.* No, there was none.

* Question one hundred and first does not appear in the original; this is probably owing to a mistake in numbering the questions.

Question One Hundred and Twelfth.—What do you call such a judge as Mr. Begorrat was, according to the Spanish law?—*Answer.*—Alcalde in ordinary, of the first election.

Question One Hundred and Thirteenth.—Is there no other designation of a judge not graduated in the Spanish law?—*Answer.* Yes, Lego.

Question One Hundred and Fourteenth.—Is not the *escrivano* of a Judge *Lego* assessor to him?—*Answer.* When the judge requires it.

Question One Hundred and Fifteenth.—What is the usual question or torture recognized by the Spanish laws?—*Answer.* I do not know.

Question One Hundred and Sixteenth.—Do you know *Raphael Chando*?—*Answer.* Yes.

Question One Hundred and Seventeenth.—What is his general character?—*Answer.* He had both good and bad qualities.

Question One Hundred and Eighteenth.—Is he a man whom you would believe on his oath?—*Answer.* I have some doubts whether I would or not.

Question One Hundred and Nineteenth.—Do you know *Manuel Robles*?—*Answer.* Yes.

Question One Hundred and Twentieth.—What is his general character?—*Answer.* He lived the greatest part of his time in liquor.

Question One Hundred and Twenty-first.—What do you mean by living in liquor?—*Answer.* Always Drunk.

Question One Hundred and Twenty-second.—What was his calling or trade?—*Answer.* Inferior *Alquazil*.

Question One Hundred and Twenty-third.—Is he a man whom you would believe on his oath?—*Answer.* I have doubts whether I would or not.

Question One Hundred and Twenty-fourth.—Do you know *Porto Rico*?—*Answer.* Yes.

Question One Hundred and Twenty-fifth.—What is his general character?—*Answer.* One of those who gets drunk frequently.

Question One Hundred and Twenty-sixth.—What was his calling or trade?—*Answer.* The man who looked after the chained Negroes.

Question One Hundred and Twenty-seventh.—Is he a man whom you would believe on his oath?—*Answer.* I have doubts whether I would or not.

Question One Hundred and Twenty-eighth.—Where are the said three last mentioned persons?—*Answer.* I have heard that they are in London.

Question One hundred and Twenty-ninth.—When and with whom did they embark?

Mr. Hayes on the part of the prosecu-

tion objected to the last question, and after Mr. *Attorney-general* on behalf of the defendant was heard in reply, *His Excellency* was pleased to postpone the decision thereon unto the next Court day.*

On account of the lateness of the hour the continuation of the cross-examination of the witness on behalf of the defendant was postponed, and the court adjourned by proclamation unto Thursday the seventh day of February next.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber at Government-house, at Port of Spain, in the island of Trinidad, on Thursday the seventh day of February, in the Forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; and in consequence of the illness of Mr. Hayes, adjourned the Court by Proclamation unto Thursday the Twenty-first day of February instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, in Port of Spain, in the island of Trinidad, on Thursday the twenty-first day of February, in the Forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; and in consequence of the illness of Mr. Hayes, adjourned the Court by Proclamation unto Thursday the seventh day of March next.

GEORGE KNOX Clerk of this Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the island of Trinidad, on Thursday the seventh day of March, in the Forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; and in consequence of martial law being in force, adjourned the Court by Proclamation unto Thursday the twenty-first day of March instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in

* *Vide Infra*, p. 271, the proceedings on May 2.

the island of Trinidad, on Thursday the *twenty-first day of March*, in the Forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; and in consequence of martial law being in force, adjourned the Court by Proclamation unto Thursday the fourth day of April next.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the island of Trinidad, on Thursday the *fourth day of April*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; and in consequence of martial law being in force, adjourned the Court by proclamation unto Thursday the eleventh day of April instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-Chamber in Government House, at Port of Spain, in the Island of Trinidad, on Thursday the *eleventh day of April*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; on account of public business, martial law having ceased, the Court adjourned unto Wednesday the seventeenth day of April instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to Adjournment, at the Council Chamber in Government House, at Port of Spain, in the Island of Trinidad, on Wednesday the *seventeenth day of April*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; Francisco de Castro was called by Mr. Attorney-general, on behalf of the defendant.

But in consequence of his not attending, the continuation of his cross-examination was postponed to the next court day.

The Reverend Father Joseph Maria Angeles was then called by Mr. Hayes on the part of the prosecution, and duly

sworn according to his religion and situation.

Question first by Mr. Hayes.—Are you the curate of Port of Spain?—*Answer.* Yes.

Question second.—How long have you been so?—*Answer.* Twenty-one years next September.

Question third.—Have you during that time kept the registry of baptisms performed in the catholic church within your cure, or by whom has it been kept?

—*Answer.* I did not keep the registry of all the baptisms. When I first came here there was another priest curate of all the old inhabitants, I was made curate of the new inhabitants and chaplain of the soldiers.

Question fourth.—How long have you been sole curate or chaplain of Port of Spain?—*Answer.* Since May, one thousand seven hundred and eighty-seven.

Question fifth.—Have you since May, one thousand seven hundred and eighty-seven, had the possession of the register of baptisms performed in your church, or by whom has it been kept?—*Answer.* Yes.

Question sixth.—Are all the entries made in the register during that time in your hand-writing?—*Answer.* All the baptisms performed in the church are not entered in the register, but all the entries made are in my hand-writing.

Question seventh.—Why are not all the baptisms performed in your church entered in the register?—*Answer.* Because the parents or godfathers did not come to me for that purpose.

Question eighth.—Are there many instances of baptisms performed without their being duly registered?—*Answer.* I think there are, but I cannot say.

[The witness was here desired to produce the register, which he did.]

Question ninth.—Does that book contain the register of the baptism of Luisa Calderon?—*Answer.* Yes.

The witness was desired to turn to the entry made in the registry of the baptism of Luisa Calderon. He first shewed a memorandum in the date of September one thousand seven hundred and eighty eight, fo. 59, b. of the registry, where were written the words "Luisa vease fo. 89. n. 2." and afterwards he pointed out fo. 89 a &c. n. 2 of the said registry, where was written as follows: "Luisa Parvula
"trija natural de Maria del Rosario
"Calderon proviniante de Cariaco
"provincia de Cumana en costa firma
"nacio a viente 7—rinco de Agosto del
"año mil set cientos octunta y ocho
"y oy dia once de Septiembre del
"mismo año en esta rectorial iglesia

"la Concepcion de Nuestra Senora
 "Parrogniel del puerto de Espana
 "siendo Madrina Luisa Villegas parda
 "libre acompanada de Juan Santiago
 "Bacuba pardo libre instruida del
 "parentesco espiritual y demas obli-
 "gaciones en acto tan solemne con-
 "trahidas fue segun las formulas y
 "ceremonias del ritual Romano bap-
 "tizada solemnemente per el Pres-
 "betero B^{do} Dⁿ Estevan Aneses y Ar-
 "ragon Sacrestan de la subsodietra
 "parroquia de mi licencia y Permiso
 "an Calidad de cura castrence parroco
 "rector que soy de los nuevos colonos
 "de la isla Trinidad de Barlouvento
 "y de los antiquos habitantes del
 "puerto de Expana per S. M. C. de
 "que doy fe B^o Josef Maria Angeles."

Question Tenth.—Is the memorandum in fo. 59, b, in your hand-writing?—*Answer.* Yes.

Question Eleventh.—Was that memorandum made at the time of Luisa Calderon's baptism, or when?—*Answer.* No, I believe two or three months afterwards.

Question Twelfth.—Are you sure that it was not more than a year afterwards?—*Answer.* Not a year.

Question Thirteenth.—For what reason was that memorandum inserted?—*Ans.* Because in that place the entry of the baptism ought to have been made.

Question Fourteenth.—Why was the entry not made there?—*Answer.* Because the sacristan did not deliver in the memorandum of names in time.

Question Fifteenth.—Is the entry in fo. 89, n. 2, in your hand-writing, was it made at the time of the baptism of Luisa Calderon, or afterwards?—*Answer.* It is in my hand-writing, and entered two or three months afterwards.

Mr. Attorney General moved the court that the rev. father Pedro Reyes Bravo, the vicar general of this colony, be directed to inspect the book of registry of baptisms produced by the witness Josef Maria Angeles, and that he appear before this court, and deliver in on oath at the next meeting the observations he has then made upon such book, and the entries therein.

Mr. Hayes on the part of the prosecution objected to the above motion, but his excellency was pleased to grant the same, and the same is ordered accordingly.

Question Sixteenth by Mr. Hayes.—Was the second entry in fo. 89 made after the month of December, one thousand seven hundred and eighty nine, or before that period?—*Answer.* It was made after December, one thousand seven hundred and eighty nine.

Question Seventeenth.—Did not more than a year elapse, from the day of Luisa Calderon's baptism to the making of the entry of it?—*Answer.* More than one year.

Question Eighteenth.—It appears by the registry, that Luisa Calderon was baptized in September, one thousand seven hundred and eighty eight. How much time elapsed between her baptism and the making of the entry?—*Answer.* I believe one year or more. The sacristan brought me a good number of entries to make.

Question Nineteenth.—Was it a year and a half afterwards?—*Answer.* No, a year and three or four months.

Question Twentieth.—It appears that you have answered to previous questions, that it was only three months or thereabout, explain what you mean by this?—*Answer.* I mean to say, that three or four months after the sacristan brought me the memoranda of baptisms, I entered them in the registry.

Question Twenty-first.—By whom was Luisa Calderon baptized?—*Answer.* By the sacristan don Estevan Aneses di Aragon.

Question Twenty-second.—Did he baptize her by your order or permission?—*Answer.* Yes, as is stated in the register.

Question Twenty-third.—Do you mean to swear that this entry's not being inserted in its right place, is attributable to the sacristan's not having delivered his memoranda of baptisms in due time?—*Answer.* Yes, I swear so; I could not enter it before, because I had not the memoranda of it.

Question Twenty-fourth.—Do you mean to swear that the entry was fairly made, and that in the making of it you acted consistently with your duty as priest, and with your feelings as a conscientious man?—*Answer.* Yes.

Question Twenty-fifth.—Where is the sacristan don Estevan Aneses?—*Answer.* He was at Angustura.

Question Twenty-sixth.—Have you the memorandum delivered by the sacristan, from which you made the entry?—*Answer.* No, it is lost, it was a little paper.

Question Twenty-seventh.—Is it usual to preserve those memoranda?—*Answer.* They are kept till they are entered.

Question Twenty-eighth.—Are the permissions to baptize given in writing to the sacristan?—*Answer.* Sometimes in writing, and sometimes verbally.

Question Twenty-ninth.—Was the permission to baptize Luisa Calderon given in writing or verbally?—*Answer.* In writing on a slip of paper.

Question Thirtieth.—Was that slip of

paper returned with the memorandum?—

Answer. Yes, with the mark “baptized,” among other memoranda.

Question Thirty-first.—Have you any doubt of the child having been baptized, and at the time mentioned in the memoranda?—*Answer.* None.

On account of the lateness of the hour, the Court then adjourned by proclamation unto Monday the twenty-second day of April instant.

GEORGE KNOX Clerk of the Court

At a Court holden pursuant to adjournment at the Council Chamber in Government House, at Port of Spain, in the island of Trinidad, on Monday the *twenty-second day of April*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; the Rev. Father Josef Maria Angeles appeared, and his examination on the part of the prosecution was resumed by Mr. Hayes.

Question Thirty-second.—Does the registry contain any baptisms of any other years than of the year one thousand seven hundred and eighty-eight?—*Answer.* From the twenty-second of September, one thousand seven hundred and eighty-four to the thirtieth July one thousand seven hundred and ninety-five.

Question Thirty-third.—Has it so happened, that you have ever omitted registering baptisms till the end of the year and then registered them, in any other case than that of Luisa Calderon?—*Answer.* Many others.

Question Thirty-fourth.—Are there any instances in that register? if so, point them out.—*Answer.* Thirty-one, and more.

Question Thirty-fifth.—Point out some of the others?—*Answer.* In the sixteenth of June, one thousand seven hundred and ninety-two, there is one other inserted.

Question Thirty-sixth.—What degree have you taken in Divinity?—*Answer.* Licentiate.

The witness was then cross-examined by Mr. Attorney General on the part of the defendant.

Question First.—Do you keep any church or parish registry of births?—*Answer.* Never; it is not necessary.

Question Second.—Is any particular age required by the Spanish forms for baptisms?—*Answer.* The baptisms according to the Roman ritual ought to be as soon as possible after birth.

Question Third.—That may be the rule, but what is the usual practice?—*Answer.*

Sometimes a month, sometimes seven years or more.

Question Fourth.—Would you refuse to baptize a child of any age?—*Answer.* Till six years they are called parvulos, afterwards they must be instructed. Sometimes in the case of new negroes, I baptize them like children of 10 or 12 years, and enter them as parvulos of six.

Question Fifth.—Do you ever require a certificate of birth before you baptize when the person is not born in your parish?—*Ans.* No; no certificate at all.

Question Sixth.—From what source of information was the exact day of the birth of Luisa Calderon ascertained as entered in the registry?—*Answer.* The god-fathers and god-mothers came to me at my house and desired me to baptize a child of such an age. The registry does not ascertain the age or the colour, but only the baptism.

Question Seventh.—Is the entry of Luisa Calderon's birth in the register book of baptisms, conclusive in your mind as to the day of her birth?—*Ans.* I never saw the child; I cannot swear to her age; the entry is not conclusive of her age; I only had it from her god-mother, god-father, parents, and relations.

Question Eighth.—Was the information of her age given to you in writing?—*Answer.* No, verbally.

Question Ninth.—Did the sacristan, whom you ordered to baptize the child, report the ceremony in writing, and did he sign it?—*Answer.* Sometimes I ordered the sacristan in writing to baptize a child, and the sacristan returned me the order with a bit of it torn off, as a sign of his having done so, or the word “baptized” under it; he never used to sign them; sometimes I gave a verbal order to baptize, and then the certificate was given verbally.

Question Tenth.—Who gave in the day and year of the birth of Luisa Calderon to the sacristan?—*Answer.* I did, from what I received from the god-father or god-mother.

Question Eleventh.—Had you any certificate from any curate, or bishop, or other person in ecclesiastical authority of the day of the birth of Luisa Calderon?—*Answer.* Never.

Question Twelfth.—Then the only reason of the entry of her birth in the baptismal register is founded solely on the verbal declaration of the god-mother or god-father?—*Answer.* Solely.

Question Thirteenth.—Were they inhabitants of the place where Luisa Calderon was born?—*Answer.* One of them is living; I understood that Luisa Calderon was born in Port of Spain.

Question Fourteenth.—When did Don Estevan Aneses leave Trinidad?—*Ans.*

Near a year or two before the island was taken.

Question Fifteenth.--Have you given any certificate, or transcript, or copy of the baptism of Luisa Calderon to herself or any other person? if so, when?--*Ans.* I gave two, I think, to Don Juan Montes and her mother, when he went to London from this island.

Question Sixteenth.--Were such certificates precisely conformable to the entry?--*Answer.* Word for word.

Question Seventeenth.--Did you ever give any certificate of having baptized Luisa Calderon yourself?--*Ans.* Never.

Question Eighteenth.--Then all you know about the baptism of Luisa Calderon is making an entry of it in the registry book from the paper given to you by the sacristan?--*Answer.* All, no other.

Question Nineteenth.--Do you know any thing of the age of Luisa Calderon, than what is stated in the entry of her baptism?--*Answer.* No.

Question Twentieth.--Did you know, or did you ever see Luisa Calderon at the time she was committed to gaol for the supposed robbery of Pedro Ruiz?--*Ans.* Never, only a year before.

Question Twenty-first.--What did you think was then her age?--*Answer.* I can't say. How can I tell the age of a woman whom I only see sitting at her door?

Question Twenty-second.--Was she to appearance a woman?--*Answer.* Yes, a woman; I can't judge of her size, as she was sitting down.

Question Twenty-third.--Were you ever applied to in order to marry her to Pedro Ruiz?--*Answer.* Never.

Question Twenty-fourth.--If you had been regularly applied to, would you have performed the ceremony of marriage between her and any other?--*Answer.* Yes, why not.

Question Twenty-fifth.--Does not a white man degrade himself in the Spanish law by marrying a coloured person?--*Answer.* I have always understood so.

PR^o. JOSEPH MARIA ANGELES.

JAMES MEANY, Interpreter.

The Reverend Father *Don Pedro Reyes Bravo*, attended in pursuance of the order aforesaid, and was duly sworn, according to his religion and situation.

Question First by Mr. Attorney General, on behalf of the defendant.--Are you the vicar-general of this island?--*Ans.* I am the vicar of the whole island.

Question Second.--Are you an ecclesiastical judge in this colony?--*Answer.* Yes.

Question Third.--Is Don Padre Maria

Angeles under your jurisdiction?--*Ans.* Yes.

Question Fourth.--Have you, according to the order of the Court, examined the registry of the baptism of Luisa Calderon in page eighty-nine, and the note relating to it in page fifty-nine, and what observations have you made upon it?--

Answer. I have made my observations and put them on paper, and I beg leave to produce it to the Court.

By the Court.--You can only recur to your notes to refresh your memory, but you must relate the observations which have occurred to you *viva voce*.--*Answer.* The first observation is, that the entry (*la partida*) of Luisa Calderon's baptism certifies her to have been baptized the eleventh of September, one thousand seven hundred and eighty-eight, in fol. 89, after the end of the book entitled and signed "The first Book at the end of the year one thousand seven hundred and eighty-nine." The second is, that between the first and second books of the same volume are found four pages which appear to have been left blank, either on purpose or to supply the omissions of the curate: Twenty-eight entries entitled, "*partes extraviadas*," are placed without order or proportion, and at the end of them is another note signed to excite attention to the said entries, a little below which is written the word "*Finis*:" After this there remain two pages and part of another, between the *Finis* of one book and the beginning of the other, in which place are three more *partidas*, of which the last is that of Luisa Calderon, leaving after it a blank of a page and a half, contrary to the usual custom. The third observation is, that the three *partidas*, of which the last is that of Luisa Calderon, though older by its date, were without doubt entered the last as appears by the ink. The fourth observation is, that at the end of the said *partidas*, after the signature of the curate don Josef Maria Angeles following the same line is written *Dado el certificado a ella*, and a line drawn through it, which does not appear to be of more recent writing than that of the entry. Fifthly, the ink with which was written the memorandum in fol. 59, inserted in the last line of that page, namely, *Luisa vease al folio 89*, is quite fresh. Sixthly, among *las partidas extraviadas*, which are as many as thirty-one, including that of Luisa Calderon, there are three of baptisms performed by the sacristan Aneses. Seventhly, the memorandum of the baptism of Luisa Calderon, although it might have happened to have been *misplaced*, ought to have been, as soon as it was given in, as well as the rest, entered by the Padre Josef Maria Angeles in the

present book, and by no means in the place where it is; and it cannot therefore be considered as a register, because it was made in pages left blank. Therefore I consider the said entry of baptism of Luisa Calderon as of no authority whatever, and very suspicious. I also demand permission to inspect all the other registries up to this day, and particularly the old register book, for the purpose of making further observation.

The witness was then cross-examined by Mr. *Hayes* on the part of the prosecution.

Question First.—From whom did you receive the registry?—*Answer.* From the clerk of the court.

Question Second.—Has it been in your own custody from the time you received it until you brought it into court?—*Answer.* Yes.

Question Third.—Have you had any communication on the subject of the said registry with any one? are the observations you have made on it perfectly your own, or have you received assistance from any person whatever?—*Answer.* I have consulted with myself, having the faculty of judging perfectly of the book. The observations I have just given to the Court are those which I made, with the assistance of the clerk of the court.

Question Fourth.—Are you curate of Arima?—*Answer.* I am *propietario* of Arima.

Question Fifth.—Do you keep the registry of that cure?—*Answer.* Yes, and also of Saint Josep's.

Question Sixth.—Has it ever happened with you, that an entry of a baptism has been omitted sometime after the ceremony of baptism was performed?—*Ans.* Yes, but in the same book, in the same year, I make the entry, specifying that it belongs to such an year.

Question Seventh.—Supposing that you did not find it out till the year was ended, would you insert the registry at the end of the year, or in what other part of the book?—*Answer.* Supposing the month of April of the following year I was to find a memorandum, I would enter it on the very day I found it, and mention that it belonged to such a year.

Question Eighth. Is such the general method or rule observed in the registering of baptisms in the Catholic church?—*Answer.* Yes.

Question Ninth.—You say that the entry of the baptism of Luisa Calderon appears suspicious to you, explain why you think it suspicious?—*Answer.* Because I can give no credit to it.

Question Tenth.—How does it appear suspicious?—*Answer.* Because it is not entered where it ought to have been en-

tered, and on account of the other reasons already given by me.

Question Eleventh.—Do you suspect that the entry of the baptism of Luisa Calderon has been made for any improper purpose?—*Answer.* I have already explained my way of thinking.

Question Twelfth.—How long have you known Joseph Maria Angeles?—*Answer.* I believe from the year one thousand seven hundred and eighty-four, when I first arrived.

Question Thirteenth.—From the observations you have made on the general character of Josef Maria Angeles, do you believe him capable of having made the entry with any other view than that of repairing an omission of an entry which ought to have been made previously?—

Answer. I never believed him to be a man of good faith from the first day I saw him.

Question Fourteenth.—Have you had any personal difference with him?—*Answer.* Never.

Question Fifteenth.—Upon what particular acts do you found your opinion, that he is not a man of good faith?—

Answer. Because he has not been obedient to his superiors, and has not fulfilled the duties of his ministry.

Question Sixteenth.—When you speak of superiors, do you confine it to the orders of yourself or of whom else?—*Ans.* I mean all his ecclesiastical superiors who have been in this island during his residence here.

Question Seventeenth.—What degree have you taken in divinity?—*Ans.* None.

Question Eighteenth.—Is a licentiate in divinity considered as having taken a degree?—*Answer.* I do not know of Maria Angeles having any such title in divinity.

Question Nineteenth.—With the exception of your appointment of vicar-general of this island, are you the superior of Josef Maria Angeles? *Answer.* No.

PEDRO JOSEF REYEZ BRAVO.

JAMES MEANY, Interpreter.

On account of the lateness of the hour, the Court then adjourned unto Friday the twenty-sixth day of April instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-House, at Port of Spain, in the island of Trinidad, on Friday the *twenty-sixth day of April*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; on account of public business, the Court ad-

journed unto Thursday the second day of May next.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the island of Trinidad, on Thursday the second day of May, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; Francisco de Castro was called, and his Excellency was pleased to give the following decision on the objection made by Mr. Hayes on a former day* to the Question, "When and with whom did they embark?"

"Mr. Hayes objects to this question on the grounds that it is immaterial to the issue or points in dispute, and that he not having been allowed to ask Maria Calderon any question relative to her imprisonment, Mr. Gloster cannot therefore be permitted to ask the above question. After duly weighing and considering the strength of Mr. Hayes's objection to the question of Mr. Gloster, viz. *when and with whom did they embark*, it appears to me that Mr. Hayes not having been allowed to ask Maria Calderon respecting her imprisonment, being wholly unconnected with any matter charged in the indictment before the Court, is not by any means a just reason why the question put by Mr. Gloster should not be permitted, as it certainly has immediate reference to the subject under investigation, and through which Mr. Gloster asserts he expects to derive considerable benefit in behalf of his client.

"Deeming it therefore as material to the points at issue, as I think it a proper and fair question, I cannot refuse the same to be put to the witness, and consequently over-rule the objection made by Mr. Hayes."

The continuation of the cross-examination of the witness was then resumed by Mr. Attorney General.

Question One Hundred and Twentieth.—When and with whom did Raphael Chando, Manuel Robles, and Porto Rico embark?—*Answer.* I do not exactly know when, but they went in the convoy in which governor Fullarton sailed.

Question One Hundred and Thirtieth.—You have stated in your affidavit filed in this court, that you entertained well-founded apprehensions as to your life and property from certain persons not named

therein, relating to the disclosure of facts during this trial; I request you to state the names of such persons, and the grounds and reasons of such apprehensions?—*Answer.* It is impossible for me to say.

Question One Hundred and Thirty-first.—Why is it impossible?—*Answer.* For the same reasons as are contained in my affidavit.

Question One Hundred and Thirty-second.—Did I ever menace or threaten you, or have you any terror or apprehension of me?—*Answer.* No.

Question One Hundred and Thirty-second.—Did I ever communicate with you in any manner on the subject of this trial, except in open court?—*Answer.* No.

Question One Hundred and Thirty-third.—You say you were present at the two piquets administered to Luisa Calderon, did she utter any loud cries, or lamentations?—*Answer.* Yes.

Question One Hundred and Thirty-fourth.—Where was the mother of Luisa Calderon at that period?—*Answer.* I do not know.

Question One Hundred and Thirty-fifth.—Do you conceive those cries to have proceeded from suffering, or from affectation?—*Answer.* I cannot tell.

Question One Hundred and Thirty-sixth.—Did she, or did she not make a noise before she was put on the piquet?—*Answer.* No.

Question One Hundred and Thirty-seventh.—As you have already said in your answer to a former question, that there might have been some affectation in her fainting, might there not also have been some affectation in her cries?—*Answer.* There might.

Question One Hundred and Thirty-eighth.—Did her cries appear to you to be occasioned by real pain, or to have proceeded from affectation?—*Answer.* Precisely from the pain of the piquet.

Question by the Court.—Is there any answer which you have made to any question proposed to you in this court which you wish to correct or alter in any manner?

—*Answer.* I recollect that a question was put to me, whether I found any omissions or defects in the process? to which I answered no; I now find two of no great consequence, which are fol. 136, a and b, not being signed by the judge and me, and the omission of a flourish after any signature in fol. 6, b. the omission of which flourish renders the act irregular, I recollect no other.

Question second by the Court.—You have persisted in refusing to state who are the persons from whom you apprehended persecution for giving your evidence before this court. I now desire to know, if under that apprehension you

* On January 31st, Vide p. 259.

have not told the whole truth in your answers, and replied to the best of your knowledge to the questions which have been put to you?—*Answer.* I have told the whole truth.

The witness was then re-examined by Mr. *Hayes* on the part of the Prosecution.

Question First.—You have said, that after the conquest of this island, the governor supplied the place of the royal audience of Carraccas; on what do you found such answer?

This question was objected to by Mr. Attorney General, on the ground that the counsel for the prosecution had no power of re-examining in chief, and that his doing so was irregular. His excellency was pleased to over-rule the objection.

Answer. On the verbal declaration of the governor himself.

Question Second.—You have said, that all the judges of the Spanish law here are *lego*, and that in such cases, the *escrivano* is the assessor when required; on what do you found such opinion?—*Ans.* On the practical law explained in the Spanish law books.

Question Third.—If the judge is not skilled in the law, does he require the assistance of one less skilled than himself?—*Answer.* No.

Question Fourth.—You have said, that you would not believe Raphael Chando on his oath. Do you speak from your own knowledge of his character?—*Ans.* I have the same opinion of him as I entertain of all the other *Alquazils* in this country.

Question Fifth.—In respect to Porto Rico, did you speak from your own knowledge of his character?—*Answer.* Yes, from my own knowledge.

FRANCISCO DE CASTRO.

JAMES MEANY, Interpreter.

The Reverend Father *Josef Maria Angeles* called and examined by Mr. Attorney General on the part of the Defendant.

Question First.—Was not Luisa Calderon born in your parish and one of your parishioners?—*Answer.* I have heard that she was born in my parish; she lived some time in Port of Spain.

Question Second.—What was her general conduct and character?—*Answer.* I do not know any thing about it.

P^o. JOSEF MARIA ANGELES.

JAMES MEANY, Interpreter.

On account of the lateness of the hour, the Court then adjourned unto Friday the third day of May instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-Chamber in Government-house, at Port of Spain, in the island of Trinidad, on Friday the third day of May, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; *Juana Talavera*, free coloured woman, was called by Mr. *Hayes* on the part of the prosecution, and duly sworn.

Question First.—Do you know Luisa Calderon, and how long have you known her?—*Answer.* I have known her from the age of two years old.

Question Second.—How old was Luisa Calderon when she went to live with Pedro Ruiz?—*Answer.* By my reckoning, and by what her mother told me, she was ten years old.

Question Third.—Did she appear to you to be about that age?—*Answer.* Yes, she was not a woman, had no breasts, and therefore I thought her of that age.

Question Fourth.—How long did Luisa Calderon live with Pedro Ruiz previous to her being sent to gaol?—*Answer.* Two years, by my reckoning.

Question Fifth.—Do you recollect her being sent to prison, and how long she was detained there?—*Answer.* Ten months, and ten days.

Question Sixth.—Did you see her during her confinement?—*Answer.* No, I only saw her the day she was let out to look for a defensor.

Question Seventh.—Did Luisa Calderon at the time she was let out to seek a defensor, inform you of her having undergone any punishment?—*Answer.* No, I did not speak to her.

Question Eighth.—What did then appear to be the state of her health?—*Ans.* Sickly.

Question Ninth.—From what cause did her sickness appear to proceed?—*Answer.* I do not know; I saw her lame of her leg, and swelled.

Question Tenth.—Did you see her after she was set at liberty?—*Answer.* Yes.

Question Eleventh.—Was she then sick and lame, and did she remain so for any length of time?—*Answer.* I saw her, and she was swelled, and she continued so for some time; I also saw the satisfaction that was given her for her suffering.

Question Twelfth.—What was that satisfaction?—*Answer.* After my husband was sentenced to pay, it is mentioned in the sentence that Luisa Calderon should be pardoned, on account of her long

delay, which could not have been avoided.

The witness was then cross-examined by Mr. Attorney General on behalf of the Defendant.

Question First.—You say you have known Luisa Calderon since she was two years old, how did you know that she was only two years old at that period?—

Answer. From what her mother told me, and seeing her a little child.

Question Second.—Were you present at her birth?—*Answer.* No.

Question Third.—Were you present at her birth?—*Answer.* No.

Question Fourth.—Did you ever see a public register or certificate of her birth?

—*Answer.* I only can say, that speaking one day with Padre Aneses, he told me that Luisa was of the same age as my daughter, who was born in the year ninety.

Question Fifth.—You mention that Luisa Calderon lived with Pedro Ruiz when she was ten years old, in what situation did she live with Pedro Ruiz?

—*Answer.* She was at my school, and finding that she did not go any more, I asked Luisa the cause, but could get no answer. Luisa Calderon's sisters told me, that she was living with Pedro Ruiz as his wife.

Question Sixth.—What husband did you allude to in your former answer?—

Answer. My own husband, Carlos Gonzales.

Question Seventh.—Was Carlos Gonzales put in prison on the charge of robbing Pedro Ruiz?—*Answer.* Yes.

Question Eighth.—Did you keep a school at Port of Spain?—*Answer.* No. I only taught three children.

Question Ninth.—Was Luisa Calderon one of those three?—*Answer.* Yes.

Question Tenth.—Do you know of your own knowledge, that Luisa Calderon lived with Pedro Ruiz as his wife?—*Ans.* Yes.

Question Eleventh.—Did she live with Pedro Ruiz as his wife, before or after she was sent to prison?—*Answer.* Before.

Question Twelfth.—At what age was Luisa Calderon sent to gaol?—*Answer.* Twelve years old.

Question Thirteenth.—How do you know she was that age?—*Answer.* By the reckoning I kept with Luisa's mother.

Question Fourteenth.—How long was it before Luisa was sent to gaol, that you knew she lived with Pedro Ruiz as his wife?—*Answer.* Two years.

Question Fifteenth.—Do you know the age of Luisa Calderon's mother?—*Answer.* No.

JUANA TALAVERA.

JAMES MEANY, Interpreter.

Juan Bermudes was then called by Mr. Hayes on the part of the prosecution and duly sworn.

Question First.—Are you an escrivano and interpreter?—*Answer.* Interpreter only.

Question Second.—Do you know Luisa Calderon? were you the assessor of any and what judge in the process carried on against her?—*Answer.* I know Luisa Calderon, but was not the assessor of any judge.

Question Third.—Did you attend as the defensor of Luisa Calderon?—*Answer.* I only made the last escrito that was drawn.

Question Fourth.—Did Luisa Calderon apply to you to act as her defensor?—*Answer.* Never.

Question Fifth.—Did you attend at any torture of Luisa Calderon, and in what character?—*Answer.* Never.

Question Sixth.—Did you, at any time during the proceedings, understand that you were appointed the defensor of Luisa Calderon? from whom did you get such information?—*Answer.* No, never.

Question Seventh.—Were you appointed the guardian of Luisa Calderon?—*Answer.* Nothing was ever notified to me on the subject.

Question Eighth.—If you had been appointed, whose duty would it have been to have notified such appointment to you?—*Answer.* The escrivano of the cause.

Question Ninth. At whose request did you attend to write the last escrito?—

Answer. The alcalde Don Farfan sent for me at one o'clock; I found him in company with Luisa; she was crying, and she told him "I have been looking for a defensor all about, and have not been able to find one. Nobody would undertake to defend me; I beg you as a favour to undertake my defence, let what will happen I confide in you. If I am hung or sent to the gallies, I don't care; I confide in you." I then replied, "it is a matter of consequence, a charge of robbery, and I am no lawyer." Don Farfan then said, "I command you to comply, you shall have the proceedings, and you will see what you can say for her;" in consequence I made the said escrito.

The witness was then desired to point out the said escrito, and he accordingly shewed fol. 63, 64, and 65, which were read.

Question Tenth.—You have stated in your escrito, that Luisa Calderon was fourteen, how did you come by that knowledge?—*Answer.* From herself; she told me that she believed she was fourteen.

Question Eleventh.—Did you not at the time object to her being tortured on account of her tender years?—*Answer.* When I went to consult with her, she had already been on the piquet.

Question Twelfth.—Did you attend at any time when the piquet was applied to Luisa Calderon?—*Answer.* No, I knew nothing about it but from her.

Question Thirteenth.—Is it customary for a person at the time of being tortured to have a defensor?—*Answer.* Yes, it is the custom.

The witness was then cross-examined by Mr. Attorney General on behalf of the defendant.

Question First.—Acting as Luisa Calderon's curator or guardian, by the appointment of the alcalde, did you declare her, in the proceedings, to be fourteen?—*Answer.* Yes.

Question Second.—If she had been under that age would you not have thought it your duty to have stated it?—*Answer.* Certainly.

Question Third.—Were you not concerned in taking various depositions throughout the cause?—*Answer.* Yes, I took them in rough with Castro, when they went to the house to verify the robbery; I was then acting as interpreter.

Question Fourth.—Was not this at the beginning of the cause?—*Answer.* Yes.

Question Fifth.—By whose order or desire did you attend?—*Answer.* Mr. Begorrat's.

Question Sixth.—In what capacity did Castro then act?—*Answer.* As escrivano.

Question Seventh.—Where are those rough drafts?—*Answer.* Castro took them; I do not know where they are.

Question Eighth.—Are they on the face of the proceedings?—*Answer.* I may as interpreter sometimes take the depositions in rough, but it is the duty of the escrivano to copy them fair in the process. I see several declarations in the process, but whether they are copies of my rough drafts or not I cannot say.

JUAN BERMUDEZ.

Juan Santiago, free coloured man, called by Mr. Hayes on the part of the prosecution, and duly sworn.

Question First.—Do you know Luisa Calderon?—*Answer.* Yes, I was her godfather.

Question Second.—State to the Court as nearly as possible the time of her baptism?—*Answer.* I do not rightly recollect.

Question Third.—Where was she baptized?—*Answer.* Here, by the Padre Aneses.

Question Fourth.—How old did she appear to be at the time?—*Answer.* A girl of not one month.

Question Fifth.—Is it ten years since she was baptized?—*Answer.* I think so, a little more or less. JUAN SANTIAGO.

Mr. Hayes acquainted the Court, that the evidence on the part of the prosecution, with the exception of Flores, an alguazil, now on the Spanish main, was closed.

Jean Baptisto Vallot, formerly gaoler of the prison of Port of Spain, was called by Mr. Attorney-General on the part of the defendant.

Mr. Hayes, on the part of the prosecution, objected to his being sworn, on the ground of his being implicated in the charges exhibited against the defendant.

His Excellency was pleased to over-rule the objection, and the witness was duly sworn.

Question First.—Were you not gaoler of this island in the year of our Lord eighteen hundred and one?—*Answer.* Yes.

Question Second.—Was Luisa Calderon committed to your custody in that year, and by whom, and for what crime?—*Ans.* Yes, by general Picton, on a charge of being an accomplice in a robbery.

Question Third.—Was one Carlos Gonzales committed to your custody also; if yea, when and for what crime?—*Answer.* Three or four days after the imprisonment of Luisa, I cannot tell for what crime.

Question Fourth.—Was Luisa Calderon put on the piquet during her confinement, if yea, by whose orders?—*Answer.* Yes, by order of the judge Mr. Begorrat, alcalde of the first election.

Question Fifth.—How often was she put on the piquet?—*Answer.* I believe twice.

Question Sixth.—How long did she remain on the piquet each time?—*Answer.* The first time she might have been from fifteen to eighteen minutes, the second time four or five minutes.

Question Seventh.—Did she make any confession while on the piquet?—*Answer.* I heard her say, that it was a man named Carlos Gonzales who had taken the money.

Question Eighth.—Did she at either of those times appear to suffer great bodily pain, or utter loud cries or lamentations?—*Answer.* She did not appear to suffer much; on the contrary, she appeared to be resolved to bear any thing: she did not utter loud cries; on the contrary, I was surprised at her being so resolute.

Question Ninth.—What instrument was that piquet?—*Answer.* It is a bit of wood squared about an inch in diameter.

Question Tenth.—Did she require a surgeon, or medical assistance, after being taken down?—*Answer.* No.

Question Eleventh.—Did you see

symptoms of inflammation, or did she complain of fever?—*Answer.* No.

Question Twelfth.—Were her hands, arms or feet torn or lacerated by the punishment?—*Answer.* No, not at all: she made no complaint whatever.

Question Thirteenth.—After the piquet, do you recollect her going to Pedro Ruiz's house with the alcalde Mr. Begorrat?—*Answer.* I did not go with her; and I do not recollect whether it was before or after the piquet, that she was taken to Pedro Ruiz's house.

Question Fourteenth.—Was Luisa Calderon treated like other prisoners confined on similar charges?—*Answer.* She was treated better than any other prisoners; I never received any orders to treat her rigorously.

Question Fifteenth.—In what kind of a room was she confined? describe it.—*Answer.* She was in a large room, the whole length of the gaol, over the prison.

Question Sixteenth.—Was it a comfortable lodging for a prisoner?—*Answer.* It was a place appropriated to white people, the best in the prison.

Question Seventeenth.—What was her food and nourishment in gaol?—*Answer.* She was served from my own table; I received orders to give her more than the usual allowance; she even had coffee in the morning.

Question Eighteenth.—Had her relations access to her? and did they give her any comforts during her confinement?—*Answer.* Before her declaration was taken, her relations brought her things which I gave her; they had afterwards free access to her.

Question Nineteenth.—Did you ever refuse permission to administer her any comfort?—*Answer.* No, never; on the contrary, her sister came every day with sweetmeats and tobacco for her.

Question Twentieth.—Had you ever any communication directly or indirectly with brigadier general Picton respecting the prisoner Luisa Calderon after her first commitment.—*Answer.* General Picton never spoke to me about her, nor did I ever receive any order from him about her.

Question Twenty-first.—Of what age did Luisa Calderon appear to you?—*Ans.* I always thought, from her appearance, that she had seventeen or eighteen years at least.

Question Twenty-second.—As gaoler were you not keeper of the galley slaves?—*Answer.* Yes, I was superintendant of them.

Question Twenty-third.—What were the defendant's general orders to you respecting the treatment of all prisoners in the gaol?—*Answer.* To feed them

well; they had an eighth more bread than his majesty's soldiers, and rum every day.

Question Twenty-fourth.—In what capacity did the mulatto man Porto Rico act under you?—*Answer.* Driver of the galley slaves.

Question Twenty-fifth.—Where is he now?—*Answer.* I do not know, but believe he is with Mr. Fullarton.

Question Twenty-sixth.—Do you know one Raphael Chando?—*Answer.* Yes.

Question Twenty-seventh.—Was he not a galley slave in your custody?—*Answer.* Yes.

Question Twenty-eighth.—Do you know Manuel Robles.—*Answer.* Yes.

Question Twenty-ninth.—Was he ever in your custody?—*Answer.* Yes, as a prisoner.

Question Thirtieth.—What was his general conduct in gaol?—*Answer.* Drinking much.

Question Thirty-first.—What was the state of Luisa Calderon's health while in gaol, and when she quitted it?—*Answer.* I never saw her sick and she never complained.

Question Thirty-second.—Was she visited by any medical man during her confinement?—*Answer.* Not to my knowledge.

The witness was then cross-examined by Mr. Hayes on the part of the prosecution.

Question First.—How long previous to the year one thousand eight hundred and one were you gaoler?—*Answer.* More than ten years.

Question Second.—Were you gaoler in the Spanish time?—*Answer.* Yes.

Question Third.—Was the same piquet, on which Luisa Calderon was put, in the prison in the Spanish time?—*Ans.* No.

Question Fourth.—Was there any other instrument of torture there then?—*Ans.* No, I saw none.

Question Fifth.—When was the piquet you have alluded to erected, and by whose order?—*Answer.* By the order of general Picton in ninety-nine or eighteen hundred.

Question Sixth.—Was that the only instrument of torture in your custody as gaoler during the time you held the office?—*Answer.* Yes, the only one.

Question Seventh.—State as nearly as you can when Luisa Calderon was committed to gaol?—*Answer.* I do not remember the date.

Question Eighth.—How long was she in your custody?—*Answer.* I do not recollect exactly, I believe five or six months.

Question Ninth.—Will you swear that

it was not longer?—*Answer.* No, I do not recollect.

Question Tenth.—Who was first committed, Luisa Calderon or Carlos Gonzales?

—*Answer.* Luisa Calderon.

Question Eleventh.—Why was she committed first?—*Answer.* I do not know.

Question Twelfth.—Will you swear that Luisa Calderon was not put oftener than twice on the piquet?—*Answer.* Yes.

Question Thirteenth.—Will you swear that she was not kept more than eighteen minutes on the piquet the first time?—

Answer. I had no watch, it did not appear to me more than eighteen minutes.

Question Fourteenth.—Will you swear it was not more than half an hour?—*Ans.* It appeared to me to be only from eighteen to twenty minutes.

Question Fifteenth.—The second time will you swear, that she was not on the piquet more than five minutes?—*Answer.* It appeared to me to be only five minutes.

Question Sixteenth.—Had you no means of ascertaining the exact time?—*Answer.* No; I was busy about other things.

Question Seventeenth.—Do you recollect Mr. Begorrat's pulling out his watch and placing it in the prison for the purpose of ascertaining the time?—*Answer.* Yes.

Question Eighteenth.—Did you look at the time?—*Answer.* No.

Question Nineteenth.—Who was present at the time of those piquetings?—*Answer.* Mr. Begorrat, Mr. Castro, and the alquazil Flores.

Question Twentieth.—Did Luisa Calderon make any confession of her own guilt at any time?—*Ans.* I heard her declare that Carlos Gonzales had taken the money when he went to see her.

Question Twenty-first.—With what view was the piquet applied to Luisa Calderon?—*Answer.* I do not know; I was under the orders of the judge, who was present.

Question Twenty-second.—Do you conceive, that Luisa Calderon suffered at all while on the piquet?—*Answer.* Yes, but she made no cries; she had the appearance of being very resolute.

Question Twenty-third.—Do you attribute her silence to her wonderful resolution, or to the torture's not being applied with severity?—*Answer.* I do not know whether it was applied with severity or not.

Question Twenty-fourth.—Do you mean to swear that Luisa Calderon did not cry out at all?—*Answer.* Yes.

Question Twenty-fifth.—Neither the first nor the second time?—*Answer.* I did not hear her cry out at all.

Question Twenty-sixth.—Was you present during the whole time of her being

piqueted?—*Answer.* I went once below, but was not absent three minutes.

Question Twenty-seventh.—On what ground did you swear that she did not require medical assistance?—*Answer.* Because she made no complaint of illness.

Question Twenty-eighth.—Did you examine her feet?—*Answer.* I never saw her feet swelled, and therefore did not examine them.

Question Twenty-ninth.—Was she never in solitary confinement in a cell or otherwise?—*Answer.* She was never confined in any cell; she was confined alone in the apartment I before mentioned.

Question Thirtieth.—Was she not confined in irons during a large portion of the time?—*Answer.* She had one iron on one leg.

Question Thirty-first.—What is the grillo?—*Answer.* It is a ring fastened to a long iron fastened by a padlock.

Question Thirty-second.—Did Luisa Calderon appear to be in perfect health during the whole period of her confinement?—*Answer.* Yes.

Question Thirty-third.—Not at all lamed or injured either by the piquet-iron or iron?—*Answer.* No.

Question Thirty-fourth.—How long is it since you saw the piquet?—*Answer.* I saw it the whole time of the old gaol, but since the building of the new gaol it has been taken down.

Question Thirty-fifth.—Did it retain the same shape?—*Answer.* Yes.

Question Thirty-sixth.—Was there any room in the old gaol, of the whole length of the gaol?—*Ans.* Yes, the one in which Luisa Calderon was confined.

Question Thirty-seventh.—Why was Luisa Calderon treated better than the other prisoners in your charge?—*Answer.* Pedro Ruiz desired me to give her something more than the ordinary allowance of the prison, though he was not satisfied with her conduct, and not to mention his name.

Question Thirty-eighth.—What sum was allowed for the maintenance of each prisoner in gaol?—*Answer.* Two bits per day.

Question Thirty-ninth.—Did you receive that as gaoler?—*Answer.* Yes. To purchase provisions for the prisoners.

Question Fortieth.—What was the ration you gave them, besides one-eighth more bread than the soldiers?—*Answer.* Salt fish and tasso.

Question Forty-first.—State the quantity?—*Answer.* About half a pound every day.

Question Forty-second.—Never less?—*Answer.* Never less.

Question Forty-third.—Was there any person concerned in furnishing the

prisoners with provisions besides yourself?—*Answer.* No.

Question Forty-third.—Will you swear that what her relations brought to her was always delivered to her?—*Ans.* Yes, before myself.

Question Forty-fourth.—Were her relations, after the declarations were taken, never refused access to her at proper hours?—*Answer.* No, never; they saw her when they chose.

Question Forty-fifth.—On what account was Raphael Chandoput in prison?—*Answer.* For having stolen the money arising from the tax on houses, which he collected as alguazil.

Question Forty-sixth.—Was he confined merely on accusation, or as a punishment after conviction?—*Answer.* I do not know; he was sent by order of the intendant of police, Mr. de la Sauvagere.

Question by the Court.—Was Mr. de la Sauvagere then intendant of the police?—*Answer.* Yes, and acting as alguazil mayor.

Question Forty-seventh.—For what was Manuel Robles committed?—*Ans.* For want of attendance to his duty as alguazil.

Question Forty-eighth.—For that alone?—*Answer.* I don't know that he ever committed any other crime.

Jⁿ. B^o. VALLOT.

JAMES MEANY, Interpreter.

Don Juan Bermudes was then called by Mr. Attorney General on the part of the defendant, and duly sworn.

Question First.—Were you not the curator or guardian of Luisa Calderon?—*Answer.* Yes.

Question Second.—Did you ever inform her mother that you acted in that capacity?—*Answer.* No; the mother informed me that I was to be so appointed.

Question Second.—Did you then act as curator of Luisa Calderon under her mother's knowledge and sanction?—*Answer.* Yes.

Question Third.—Did not the mother inform you of the age of Luisa Calderon? and what was that age?—*Answer.* Yes; her mother informed me that she was fourteen years and some months old.

JUAN BERMUDES.

Don Pedro Ruiz was then called by Mr. Attorney General on the part of the defendant, and duly sworn.

Question First.—Were you not robbed in the month of December, one thousand eight hundred and one?—*Answer.* I was robbed, but I do not recollect the month.

Question Second.—Do you recollect the sum of which you were robbed?—*Answer.* Two thousand dollars, more or less.

Question Third.—To whom did you apply for justice and redress?—*Answer.* To no person; I reported it to his excellency the then governor.

Question Fourth.—What did the governor do on the occasion?—*Answer.* He came to my house, with his secretary, to see the place where the robbery had been committed.

Question Fifth.—Where was the place?—*Answer.* In my house, opposite to the governor's.

Question Sixth.—Was any person taken up for the robbery?—*Answer.* Luisa Calderon and her mother were imprisoned immediately, and Carlos Gonzales eight days afterwards.

Question Seventh.—Was Luisa Calderon at that time living with you as your mistress?—*Answer.* Yes, in my house.

Question Eighth.—How long had she been living with you previous to the robbery?—*Answer.* I do not exactly recollect; between two years and a half and three years.

Question Ninth.—When she first came to live with you was she a woman grown?—*Answer.* Surely when a woman goes to live with a man she must be full grown.

Question Tenth.—Of what age was she when you had first connexion with her?—*Answer.* I can't say.

Question Eleventh.—Was she a woman grown? did her breasts exhibit signs of puberty?—*Answer.* Yes.

Question Twelfth.—In what capacity was Carlos Gonzales in your household?—*Answer.* As a friend.

Question Thirteenth.—Was he in no confidential situation with you?—*Ans.* No.

Question Fourteenth.—Was Luisa Calderon living with you on a promise of marriage?—*Answer.* No.

Question Fifteenth.—Have you any reason to know that Carlos Gonzales had a connexion with Luisa Calderon at the time she was living with you as your kept mistress?—*Answer.* I never saw it; I heard so afterwards.

Question Sixteenth.—Did not Luisa Calderon declare it in your presence to be the fact?—*Answer.* Yes, before De Castro and the alcalde.

Question Seventeenth.—Why did you make the report of the robbery to the defendant?—*Answer.* Because he was the chief justice.

Question Eighteenth.—Did the mother of Luisa Calderon ever mention the age of her daughter to you?—*Answer.* No.

The witness was then cross-examined by Mr. Hayes on the part of the Prosecution.

Question First.—Were you ever robbed previously to the time you mention?—

Answer. Yes; not in my own house, but in the house of Vincente Santa; it was examined before Mr. Nihell.

Question Second.—Were the parties ever convicted of that robbery?—*Answer.* No, it was not proved.

Question Third.—Were you ever in the service of Mr. Salazar or Mr. Sanda?—

Answer. Eight months with Salazar, and five with Sanda.

Question Fourth.—Why were you discharged from this service?—*Answer.* I went from Salazar's because he left off shop-keeping, and from Sanda on account of two robberies which had been committed by a negro in the course of eight days, for which I told Sanda to take charge of his own shop.

Question Fifth.—Then you were not discharged by Mr. Sanda?—*Answer.* No, I gave him notice.

Question Sixth.—At the time of the robbery in your own house, did you not know that the chief justice and the two alcaldes had power to redress the injuries of which you complained, and that from their judgment there was an appeal to the governor?—*Answer.* Yes; but as the governor was the nearest, I applied to him.

Question Seventh.—Was there at that time any account standing between you and general Picton?—*Answer.* Before and after I had several accounts for mules and cattle, but I was paid immediately.

Question Eighth.—Was there no money due to you by general Picton at the time of your making the report of the robbery of two thousand dollars?—*Answer.* No.

Question by Mr. Attorney General on the behalf of the defendant.—Were you not in the habits of selling mules and cattle to any body who wanted them?—*Answer.* Yes.

PEDRO RUIZ.

JAMES MEANY, Interpreter.

On account of the lateness of the hour, the Court then adjourned unto Thursday the ninth day of May instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-House, at Port of Spain, in the island of Trinidad, on Thursday the ninth day of May, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in con-

sequence of the indisposition of George Knox, esq. his Excellency the Lieutenant Governor was pleased to appoint John Lewis, esq. to take the examinations of the witnesses, and he was sworn duly to take the same.

The Honourable *Saint Hilaire Begor-rat*, member of his Majesty's council, called by Mr. *Attorney General*, on behalf of the defendant, and duly sworn.

Question First.—Were you the judge in the business of Luisa Calderon? or were you acting by special commission from general Picton?—*Answer.* The judge who received the first complaint was general Picton, and he committed Luisa Calderon to gaol the seventh day of December, one thousand eight hundred and one, as I believe. The ninth of December I received orders from general Picton, as alcalde of the first election to prosecute the complaint, which I did to the thirty-first, on which day my alcaldeship expired, which makes twenty-two days attending to the business.

Question Second.—During the proceedings by you as judge, did general Picton interfere in any manner as the superior judge, and did he chalk out to you any formalities or necessary measures to adopt?—*Answer.* No; some time in the course of the proceeding, he asked me if the money was found, but nothing else.

Question Third.—Are you a graduated and qualified advocate under the Spanish laws?—*Answer.* No.

Question Fourth.—As not being graduated, how came you to take the office of judge?—*Answer.* To undertake the office of alcalde in ordinary it is not necessary to be a graduated advocate, nor to know how to write or read. When any member of the community is elected to such office, he is obliged to accept of it; and if he will not accept of it, he is by law subject to a penalty, and rendered unable to fulfil any public charge, and on that account not responsible for any defect or informality in the proceedings.

Question Fifth.—As specially delegated to take charge of the cause of Luisa Calderon, was it with your sanction that she was put on the piquet?—*Answer.* As alcalde in ordinary of the first election, I had not sufficient authority to administer the piquet to Luisa Calderon without an assessor, who ought to be a graduated advocate; and as there was not such to be found in the island, I was obliged, according to the law in such cases, to consult with the superior tribunal. I ordered the escrivano Castro to pass to the superior tribunal the declarations and confessions of the accused Luisa Calderon and Carlos Gonzales, observing at the

same time, that suspicions were very strong against Luisa Calderon and Carlos Gonzales, and I thought that her being put on the piquet for a short time would make her confess. The answer of the superior tribunal, after considering the proceedings, was, that she should be put on the piquet.

Question Sixth.—What do you understand by the superior tribunal?—*Answer.* His excellency general Picton, in whom was united all the civil and criminal power of the audience of Carraccas since the capture of the island.

Question Seventh.—You consulted, then, general Picton as the superior tribunal, and there being no graduated advocate to appeal to?—*Answer.* Yes, because it was the rule of the law.

Question Eighth.—Had there been a graduated advocate present, would not the appeal to general Picton have been unnecessary?—*Answer.* I would have been obliged to have gone through the business with the assessor till the definitive sentence; but I should have been unable to have put the sentence in execution, without the authority and confirmation of the superior tribunal.

Question Ninth.—You say that the suspicions were very strong against Luisa Calderon; explain to the Court what those suspicions were to which you allude, as far as you can recollect?—*Answer.* When I began the proceedings, according to the order of the general, I found that the declarations of all the witnesses proved the greatest connections between Luisa Calderon and Carlos Gonzales: That Luisa Calderon, by the declaration of the witnesses, appears to have introduced Carlos Gonzales into the narrow passage in the very instant mentioned by the witnesses of the robbery being committed, and from the passage into the chamber of Pedro Ruiz: That Luisa Calderon, in her first extrajudicial declaration before me and the escrivano Castro, taken upon oath, denied any communication or carnal intercourse whatever with Carlos Gonzales: That by her second extrajudicial declaration taken upon oath before the said Castro and me, she then confessed to have introduced Carlos Gonzales through the passage immediately into the chamber of Pedro Ruiz, when she yielded to all the wishes of Carlos Gonzales, and then retired from the chamber; but that she did not know where the money was: That Carlos Gonzales, in his first extrajudicial declaration, taken upon oath before me and the escrivano Castro, denied to have had any communication or intercourse with Luisa Calderon whatever: That the said Carlos Gonzales, in his second extrajudicial declaration on oath before me and Castro, and before Luisa

and all the witnesses, falling upon his knees, confessed, that he had effectually introduced himself through the passage into the chamber of Pedro Ruiz, with the assistance of Luisa, where he had the carnal connection with Luisa Calderon as confessed by her; and that the same intercourse had commenced four months before; and that if he had denied in his first extrajudicial declaration to have introduced himself by the passage into the chamber of Pedro Ruiz with the assistance of Luisa, and also his carnal connection with her, it was from shame, because he was a married man: That the perjury of both of the accused, the depositions of the witnesses against them, and particularly the deposition of one of the witnesses who was paralytic, lying in his bed distant from the chamber of Pedro Ruiz about eight or ten paces, stating, that in an instant after the introduction of Carlos into the passage, he heard the opening of the wicket, and in a moment afterwards, the noise of breaking open of a trunk or box: All those circumstances, and the great obstinacy of both of the accused to say any thing about the money, was the motive of my official communication to the superior tribunal respecting the piqueting of Luisa Calderon.

Question Tenth.—Did ever Luisa Calderon, in any stage of the proceedings before your tribunal, allege that she was a minor, and under the age of fourteen years?—*Answer.* No; on the contrary, in her first extrajudicial declaration which I have already mentioned, the first question put to her before the escrivano Castro was, as to her age and profession; and she answered, that she had passed fourteen years, and, as to her profession, she had been living with Pedro Ruiz as his concubine for near three years; which declaration left no doubt with me as to her age, as the law fixed the age of puberty at twelve years.

Question Eleventh.—Were you ever warned by Castro of the formality of letting five days pass after the decree and before the execution of it?—*Answer.* No; and if he had done so, I have always shown too much respect for the law, not to have allowed it; but I knew Castro, as escrivano, was obliged to advise me of all the formality of the law as a judge lego and imperito. But, as far as I could understand the law, I found in the author Bobadilla, that being authorized by the superior tribunal in such cases, I could administer the torture without any kind of communication to the accused.

Question Twelfth.—What do you mean by a judge lego imperito?—*Answer.* A judge that is not a graduated advocate.

Question Thirteenth.—Was the piquet ordered to Luisa Calderon a Spanish mode of punishment? or were you at liberty, as a Spanish judge, to apply the mode of torture as you thought most advisable?—*Answer.* The modes of torture are not absolutely defined by the Spanish law; it is left to the discretion of the judge, and recommended by the law to the judges to administer the torture according to the constitution and strength of the accused; and as I did not consider the piquet in the gaol but as a very slight torture, in comparison to tortures used in Spain, I ordered it in preference to Luisa.

Question Fourteenth.—You say that the mode of torture is discretionary in the judge; did you collect that from the instruction of other persons, or from the Spanish law books of authority?—*Answer.* There being no Spanish lawyer in the country, I resorted to the different law books which I could procure on the subject.

Question Fifteenth.—Describe to the Court what the piquet was?—*Answer.* A small piece of wood, of about five or six inches long, and about one inch or one inch and a quarter square in the top, fixed to the floor.

Question Sixteenth.—Was it pointed or square on the top?—*Answer.* It was about an inch or an inch and a quarter square on the top.

Question Seventeenth.—How often was Luisa Calderon placed on the piquet, and for what spaces of time?—*Answer.* She was piqueted twice. The first time, about fifty-two or fifty-three minutes, which I ascertained by the watch I had on the table; and the second time, twenty-four hours afterwards, twenty-two or twenty-three minutes; and she having fainted, or appeared to faint, I ordered her to be taken down. When she was first piqueted, she said "lower me down, and I will declare," &c. After she was taken down, she declared that Carlos Gonzales, after having been introduced into the chamber of Pedro Ruiz by her, had, after she had granted him her favours, taken the trunk in which the money was, and brought it to the door of the chamber, and there broke in, and took away the money.

Question Eighteenth.—For what reason did you put her on the piquet a second time?—*Answer.* Because all the conduct in the business, and her obstinacy and perjury, could not leave any doubt with me that she was concerned in the robbery; and so she was put a second time on the piquet to discover where the money was.

Question Nineteenth.—Is there any and what time prescribed by the Spanish law

for the duration of the piquet?—*Answer.* The judge cannot order the piquet for more than one hour at a time.

Question Twentieth.—Did you deem Luisa Calderon's fainting, or appearing to faint, to proceed from excess of suffering, or from affectation?—*Answer.* By her obstinate conduct in all the business, and after I gave her a glass of wine and water, she recovered immediately, and therefore I think it proceeded from affectation; and because two days afterwards I ordered a general confrontation between her, Carlos, and all the witnesses, on the very spot where the robbery was committed; and she walked from the gaol to the spot, a distance of about fifteen hundred paces, and afterwards returned to the gaol as if she had not suffered the torture; and, whilst on the spot, she showed how Carlos had taken the trunk, brought it to the door, and broke the padlock, and took away the money, she smocking a segar all the while.

Question Twenty-first.—Did she require the assistance of a physician or surgeon after either of the piquetings?—*Answer.* No.

Question Twenty-second.—Have you not a right as judge to have recourse at all times to the proceedings carried on in your tribunal? and have you well inspected the written criminal proceedings against Luisa Calderon, and are they strictly conformable to the facts and circumstances during the time you had cognizance of the cause as alcalde?—*Answer.* Yes, I am authorized by the law; and when, as a member of his majesty's council, I was present at the accusation brought by colonel Fullarton against general Picton, I understood, amongst the pretended cruelties attributed to general Picton, this business of Luisa Calderon was one; and I was astonished that a business which appeared so clear to me at the time when the prosecution was carried on against Luisa Calderon, I supposed that there was some alteration or omission in the proceedings by the escrivano Castro, and I asked their excellencies the commissioners, to order, that Castro should send me the original proceedings, to inspect, and verify if they were correct, or not so, because all the declarations in the proceedings had been taken, partly extrajudicially, and partly in the rough, by the escrivano. Castro, on account of the great business of the tribunal at that time, did not then enter the proceedings, but did so some time afterwards, and brought them to me to be signed at the moment I was much occupied in the cabildo, which I did in confidence that all was right. Their excellencies the commissioners ordered Castro to trans-

mit me the proceedings, and Castro's answer was, that colonel Fullarton had taken from the office all the originals of the criminal records. As soon as I understood that the Court of King's Bench had ordered the examination of witnesses to be taken in this colony, I, according to the rights of the Spanish law, applied to the *alcaldes* in ordinary, Philip Langton and Nicholas St. Re, esquires, for liberty to inspect before them the proceedings against Luisa Calderon, with the assistance of Castro. The proceedings were then ordered to be put on the table, in the presence of Castro, and then I inspected them in his presence. I found that the two extrajudicial declarations of Luisa Calderon were omitted in the proceedings, and also the two extrajudicial declarations of Carlos Gonzales; that the age of Luisa Calderon was omitted in her first judicial declaration, when the first question put to her was respecting her age, and to which she answered, that she had passed fourteen years, but inserted at the end of her declaration on the first piqueting. There were also some omissions in other declarations. I then observed to Castro all those deficiencies and omissions; and that several of the declarations in the proceedings had been written by his clerk when he, Castro, had taken the deposition in the rough, which was irregular. He then confessed before the two magistrates, in my presence, that he had perfect knowledge of the four extrajudicial declarations of Luisa and Carlos, and stated the substance of them to be as I have stated to the Court; and also stated, that Luisa had said she had passed fourteen years, and that if her age was not stated at the head of her declaration, it was the fault of his clerk; and that he was ready to appear before any tribunal, and declare that the omissions were not made from bad motives, but owing to his great business at the tribunal; and that his friend Juan Montes denounced the business of Luisa Calderon against general Picton to colonel Fullarton.

Question Twenty-third.—Have you any and what reasons, to believe that the omissions of which you speak were intentionally made, and with malicious views towards the defendant or yourself?—*Answer.* No. At that time, I must confess that the tribunal had so much business upon hand, that it was kept open till eight or nine o'clock at night, and that Castro was also obliged to attend as well as myself; but that afterwards he, knowing the different omissions he had made, and perhaps solicited by the enemies of general Picton, believed that he could injure general Picton, by send-

ing the original proceedings to colonel Fullarton.

Question Twenty-fourth.—How long have you known Castro? was he regularly bred to the practice of the Spanish law, and duly admitted in the Spanish court?—*Answer.* I have known him since the year seventeen hundred and eighty-four. He was in the service of captain Barritto, the then governor of this island: at the arrival of Mr. Chacon, he was made an *escribano*; to the great disgust of the community, as he had been a common soldier in the veteran corps of Saint Margaritta, and went to Angustura, where he enrolled himself in the guards of the coast; and he was the servant and barber of captain Litemondi at Margaritta, which makes me believe that he was not brought up to the study of the Spanish law.

Question Twenty-fifth.—How long have you resided at Trinidad? *Answer.* Since April seventeen hundred and eighty-four. Twenty-one years.

Question Twenty-sixth.—Have you a sugar estate in this island?—*Answer.* Yes, in the quarter of Diego Martine.

Question Twenty-seventh.—What was the political state of this colony, immediately preceding the conquest of it by Great Britain?—*Answer.* A state of anarchy and confusion: Every day threatened by conspiracy. Two grand conspiracies were discovered a little time before the conquest of the island; one at Naparima, agitated by a free negro called Bernard Clossi, and the plan was, to begin by burning and destroying the plantations, and assassinating the proprietors, of which there is a legal proceeding in the office of Castro against the offenders; the other at the Carranage discovered by the commandant of the Quarter, Mr. Noel, and connected with some people in Port of Spain, and the proceedings against the offenders are also in Castro's office.

Question Twenty-eighth.—Were not murders, assassinations, rapes and robberies frequently committed in the island at that time?—*Answer.* Yes, and with impunity.

Question Twenty-ninth.—What was the general character of brigadier-general Picton, as his majesty's representative in this colony?—*Answer.* Of great integrity and disinterestedness. A man of knowledge and firmness, who saved the colony by his talents.

The examination of this witness on the part of the defence being closed,

The Witness requested permission to enter a protest on the minutes against his being examined as a witness. On

account of the lateness of the hour, adjourned to Monday, the thirteenth day of May instant.

JOHN LEWIS Acting Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the island of Trinidad, on Monday the *thirteenth day of May*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; the Honourable *St. Hilaire Begorrat* was called.

Question by the Court.—You observed in the first part of your evidence, that the piquet was in the first instance administered to Luisa Calderon by the authority of general Picton, all the power of the supreme tribunal being vested in him. Did the second application of the piquet take place alike from the orders of general Picton? or did you, as judge in the cause, direct it to be administered?—

Answer. When a judge receives authority to administer the torture to a criminal, it is done in order to discover the truth. The torture can only be administered during one hour at one time; but may be repeated twenty-four hours afterwards. I had therefore no necessity to make a second application to the superior tribunal for that purpose.

The witness was then cross-examined by Mr. *Hayes*, on the part of the Prosecution.

Question First.—You say that general Picton was invested with all the civil and criminal authority of the audience of Carraccas. Who invested him with that authority? And do you know, of your own knowledge, that he was so invested?—

Answer. I was named alcalde of the first election, for the year one thousand eight hundred and one. I found that my predecessors, since the conquest, considered that the superior tribunal was vested in his excellency the governor. I adopted the same rule of conduct, because I had no authority to ask him to produce his commission. All I know of my own knowledge, is, that in a proclamation of general Abercrombie, immediately after the conquest, it was stated that an appeal might be made from the decisions of the tribunals of the island, when the cause of action amounted to five hundred pounds sterling, to his majesty's privy council in England, making no rule respecting actions for inferior sums, on which before the conquest an appeal might have been made to the audience of Carraccas.

Question Second.—Did that proclamation state any alteration on appeals in criminal matters?—*Answer.* I do not recollect.

Question Third.—Did it state that the Spanish law would be continued in force, and that the persons included in the capitulation would be entitled to all their former privileges?—*Answer.* As far as I can recollect, it stated the continuance of the Spanish law.

Question Fourth.—Previous to the capture of the island by the English, was there not an appeal from the decisions of the alcaldes in ordinary to the governor in council, or to himself as the chief magistrate of the island?—*Answer.* No.

Question Fifth.—To whom was such appeal?—*Answer.* To the royal audience of Carraccas as the superior tribunal.

Question Sixth.—Was there not an intermediate tribunal of appeal at Cumana, nor any other inferior tribunal there?—*Answer.* No.

Question Seventh.—Of what description of persons did the audience of Carraccas consist?—*Answer.* Of Oidores.

Question Eighth.—You say that, before you could have administered the piquet without the authority of the superior tribunal, you must have had the assistance of a graduate in law; then the superior tribunal, mentioned in the book you have referred to on the subject, must have intended a tribunal as well skilled in the law as a graduated advocate?—*Ans.* I said, that I had not sufficient authority to administer the piquet without consulting the superior tribunal; the law makes no mention of the qualifications of such tribunal.

Question Ninth.—You say, that your skill in the laws of Spain is derived from books of authority within your power, and that you have no other means of acquiring a knowledge of those laws: according to the best of your skill, state to the Court, whether the superior tribunal, intended to supply the absence of a graduated advocate, did not require a person at least as well skilled in the laws as that advocate to fill such situation?—*Answer.* No, as an English governor.

Question Tenth.—Did general Picton, as such superior tribunal, order Luisa Calderon to be piqueted?—*Answer.* Certainly.

Question Eleventh.—And in consequence of that order was she piqueted both times?—*Answer.* I have already answered to that question.

Question Twelfth.—You have stated that you have examined Luisa Calderon twice extrajudicially, and twice on the piquet: were the questions put to her on oath, for the purpose of procuring a con-

fession of the crime from herself?—*Ans.* Yes, according to law.

Question Thirteenth.—The second time of her being piqueted, did she confess any matter or crime that she had not confessed when she was first piqueted?—*Answer.* She only confirmed what she had before confessed.

Question Fourteenth.—You have described the piquet to be a piece of wood: does it not also consist of ropes and pulleys?—*Answer.* The person is tied up by one arm to a pulley fastened to the ceiling, and made to stand with one foot on the piquet.

Question Fifteenth.—Was Luisa Calderon punished in that manner?—*Answer.* Certainly.

Question Sixteenth.—From the time of your undertaking the prosecution as judge, to the time of her being piqueted the second time, was she prohibited intercourse with any one except the gaoler?—*Answer.* I do not recollect.

Question Seventeenth.—Was she confined in irons during the time of your carrying on the prosecution?—*Answer.* As far as I can recollect she was, after her two extrajudicial declarations.

Question Eighteenth.—Describe the species of irons she had on when you saw her?—*Answer.* She had a small iron ring with a bar fastened to it on one leg.

Question Nineteenth.—Is that what is called the grillo?—*Answer.* The grillo means, in Spanish, irons.

Question Twentieth.—Is it possible that a person could be on the piquet fifty-two or fifty-three minutes without suffering exceedingly?—*Answer.* It would be ridiculous to say that he would not suffer; but to say that he would suffer exceedingly would not be the truth.

Question Twenty-first.—When she was taken down from the piquet did you examine Luisa Calderon?—*Answer.* Yes, because it was my duty as the judge.

Question Twenty-second.—Was the result of your examination, that she did not require surgical aid?—*Answer.* Yes, certainly; she was quite well.

Question Twenty-third.—When you applied for the proceedings for the purpose of examining them, you say that you found them in the possession of colonel Fullarton: did not colonel Fullarton, as his majesty's first commissioner, possess them, for the purpose of examining them, with every degree of right?—*Answer.* No, he had no right to examine them.

Question Twenty-fourth.—Should they, of right, be in the possession of any other than the keeper of the criminal records?—*Answer.* No; except when the alcalde orders them to be remitted to any interested person on his application for them.

Question Twenty-fifth.—Then the alcalde may take them from the keeper of the records, though the superior tribunal cannot?—*Answer.* The superior tribunal can only (on application) order the keeper of the criminal records to deliver them on receipt given to an interested party.

Question Twenty-sixth.—Were the proceedings delivered to you?—*Answer.* Yes; as I have stated, I have had them some days in my possession.

Question Twenty-seventh.—Were they not in your possession nearly twelve months previous to their being exhibited?—*Answer.* No.

Question Twenty-eighth.—How long is it since you returned them to the tribunal?—*Answer.* I cannot exactly recollect.

Question Twenty-ninth.—Ought they not to be at all times in the hands of the keeper of the records?—*Answer.* Certainly, unless they are applied for by a party interested, or by the judges who have acted in the business.

Question Thirtieth.—What time elapsed from the time of your receiving them, till the time of your returning them?—*Answer.* I cannot recollect.

Question Thirty-first.—Was it twelve months?—*Answer.* No.

Question Thirty-second.—Was it six months, or near it?—*Answer.* I suppose three or four months in my possession, and afterwards in the possession of the tribunal.

Question Thirty-third.—Did you know Mr. Castro when he was the servant of captain Barritto?—*Answer.* Yes, I have seen him employed in the house of captain Barritto as I have before stated.

Question Thirty-fourth.—Did you know him as a common soldier in the veteran corps of Margaritta?—*Answer.* No, but I can bring witnesses to prove it.

Question Thirty-fifth.—Do you know of your own knowledge, that he deserted from that corps?—*Answer.* No, but it is well known in the community.

Question Thirty-sixth.—Do you know that he inrolled himself in the guards of the coast?—*Answer.* No, it is also the common report of the community.

Question Thirty-seventh.—Do you know that he was the barber and servant of captain Litamondi?—*Answer.* It was also the common report.

Question Thirty-eighth.—You have said that immediately previous to the capture, the colony was in a state of anarchy and confusion, and that conspiracies were very common: was you concerned in any of the said conspiracies yourself?—*Ans.* No; and I find the question very indecent.

Question Thirty-ninth.—Was any proceeding had against you in this colony?—*Answer.* None to my knowledge.

Question Fortieth.—You have spoke of general Picton as a man of great integrity and disinterestedness; on what grounds do you make that assertion?—*Answer.* On my own experience and knowledge.

Question Forty-first.—Had you at any time during the government of general Picton any reason to suppose he acted with injustice towards you?—*Answer.* No: I knew general Chacon, with whom I was not on good terms since the affair of Barry and Black in the colony, had misrepresented my character in some way to general Picton; but half an hour's explanation between general Picton and me, cleared me from every bad opinion which he might have had of me, as is publicly known.

S^t. H^o. BEGORRAT.

Colonel Denis Julien Gaudin de Soter, called by Mr. Attorney General on the part of the Defendant, and duly sworn.

Question First.—Do you know the defendant general Picton, and for how many years?—*Answer.* Yes, from the end of seventeen hundred and ninety-four.

Question Second.—Were you here at the conquest of this colony?—*Answer.* Yes, I was attached to the commander-in-chief of the British forces.

Question Third.—What was your observation of the political state of this colony previous to the conquest?—*Ans.* Every thing was in the greatest disorder and confusion; no man's property was safe; as for example, when colonel Picton established a law to assure the property in negroes, governor Chacon came to me and desired me to transmit his thanks to general Picton for that order, as it had been the means of his procuring a restitution of some of his own negroes. It was not prudent to pass into the interior of the colony without an escort.

Question Fourth.—Were you not actually employed to preserve order in the distant quarters?—*Answer.* A company was raised by my son under the direction of general Abercrombie, and left to the order of general Picton, for the purpose of aiding in the preservation of tranquillity in the colony. I went away three months after the capture, and returned in fifteen months afterwards, when every thing bore a different aspect.

Question Fifth.—How long did you reside here under the government of general Picton?—*Answer.* At different times fifteen months.

Question Sixth.—What was his general character?—*Answer.* A character full of dignity, justice, activity and generosity, beloved by all the inhabitants, feared by all the disturbers of tranquillity, and ge-

nerally considered as the founder of the colony.

Question Seventh.—Did you ever know him guilty of any act of cruelty?—*Ans.* No, none.

Cross-examined by Mr. Hayes.

Question First.—Do you speak of the state of the colony at the time of its capture, or previous to it?—*Answer.* Of the epoch of the conquest.

Question Second.—Of your own knowledge?—*Answer.* From my own knowledge; when colonel Picton first came, no one could go unarmed, and four months after arms were useless.

GAUDIN DE SOTER.

The Court then adjourned unto Wednesday, the 15th day of May instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-chamber in Government-house, at Port of Spain in the Island of Trinidad, on Wednesday, the *fifteenth day of May*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; on account of public business, adjourned the Court by proclamation unto Monday, the twentieth day of May instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the council-chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday the *twentieth day of May*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of martial law being in force, adjourned the Court by proclamation unto Monday, the third day of June, instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday the *third day of June*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of martial law being in force,

adjourned the Court by proclamation unto Monday, the tenth day of June, instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday, the *tenth day of June*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

In consequence of the intended departure of Don Francisco De Farfan, alleged to be a material witness on behalf of the defendant, with the consent of Mr. Hayes on the part of the prosecution, the said *Francisco de Farfan* was called and sworn, and examined by Mr. *Attorney General*.

Question First.—Where were you born and what is your profession?—*Answer.* I was born in this island, at St. Joseph's, and my profession is that of a planter.

Question Second.—Were you not the alcalde of the first election in the criminal prosecution against Luisa Calderon, and for how long a time did you officiate therein?—*Answer.* I was alcalde of the first election, and officiated as such in the business of Luisa Calderon, from the first of January, one thousand eight hundred and two, and continued the process until the proofs were completed, and then transferred it to the superior tribunal.

Question Third.—What did you understand by the superior tribunal?—*Answer.* The person of general Picton, in whom all the powers, civil and criminal, of the audience of Carraccas were united.

Question Fourth.—How do you know that general Picton composed the superior tribunal, and that all the powers, civil and criminal, of the audience of Carraccas were united in him?—*Answer.* Because at the conquest of the island, by the instructions left by general Abercrombie to Mr. John Nihell, he was ordered to continue the functions of his situation, according to the instructions of general Picton, concerning civil matters; but, in criminal matters, no sentence was to be executed without the approbation of general Picton: of course that constituted him the superior tribunal.

Question Fifth.—Was Mr. Nihell alcalde of the first election at that period, and where are those instructions recorded?—*Answer.* He was, and the instructions are copied into the book of the *cabildo*, in which all other orders and commissions are registered.

Question Sixth.—Did you conceive those instructions binding on you, and on

all other succeeding alcaldes?—*Answer.* Certainly.

Question Seventh.—During the time the process of Luisa Calderon was under your cognizance as alcalde, did Luisa Calderon, her mother, or Bermudes who was her defensor, ever allege, that she was under the age of fourteen years?—*Answer.* No, never. In the process, throughout many declarations and escritos, her age appears. In one drawn by the defensor of Carlos Gonzales, it is said that she was fifteen.

Question Eighth.—Did you see Luisa Calderon in gaol, at the time of her being piqueted, or at any other time?—

Answer. I did not see her at the time of her being piqueted; but I saw her eight or ten days afterwards.

Question Ninth.—Did she appear sick or lame?—*Answer.* No, she had no marks.

Question Tenth.—Did she ever complain to you of her being too rigorously confined or ill-treated by the gaoler, or did she ever apply for medical aid?—

Answer. Never; on the contrary, the wife of Carlos Gonzales complained to him, that Luisa Calderon was at large in the gaol while her husband was close confined.

Question Eleventh.—Did general Picton ever give you any orders to put Luisa Calderon in irons, or in any manner interfere respecting her confinement?—

Answer. No, in no circumstance whatever.

Question Twelfth.—Are you a graduated advocate?—*Answer.* No.

Question Thirteenth.—How came you then to accept of the office of first alcalde?—

Answer. Because it is not requisite to be a graduated advocate to accept of the office; and because, when elected, a fine is imposed on refusal and many other disabilities.

Question Fourteenth.—As not being yourself a graduated advocate, why did you not call one in to be your assessor?—

Answer. Because there was none in the island after the departure of Don Juan Jurado, who went off the island according to the orders left by general Abercrombie soon after the conquest. I think that order is to be found among the instructions left with Mr. John Nihell, who was directed to act according to his conscience, without the aid of a lawyer; and that sentences given without the aid of a lawyer were to be equally valid.

Question Fifteenth.—Of what age did Luisa Calderon appear to you at the time of her imprisonment?—*Answer.* Sixteen or seventeen.

Question Sixteenth.—Did you ever see the piquet at the gaol, and what was its shape and dimensions?—*Answer.* I never saw it.

Question Seventeenth.—Do you know what punishment it is?—*Answer.* No, only from hearsay.

Question Eighteenth.—Did you finish the prosecution of Luisa Calderon?—*Answer.* Yes, as far as to the final sentence.

Question Nineteenth.—Did it appear to you that she had been justly committed and sentenced?—*Answer.* It would be ridiculous to think that she was not guilty, after the proofs in the process; wherein it appears that she introduced Carlos Gonzales, with whom she had carnal intercourse, into the room of Pedro Ruiz.

Question Twentieth.—Are there not tortures made use of by the laws of Spain, and what is the nature of them?—*Answer.* Yes; the common tortures made use of by the laws of Spain are, to tie the thumbs with small cords, and to pull them, and other tortures which I cannot describe. There are also other tortures, such as water, fire, burning the feet, &c.

Question Twenty-first.—Was the crime of Luisa Calderon of such a nature as to legally authorize the application of such torture to her?—*Answer.* Yes.

Question Twenty-second.—Do you know Manuel Robles and Raphael Chando?—*Answer.* Yes.

Question Twenty-third.—Of what country were they, and what was their general character?—*Answer.* They were Spaniards; Manuel Robles was a known borachion.

Question Twenty-fourth.—Could you credit either of them upon their oath?—*Answer.* If I had no other proofs but their oaths, I should not believe them.

Question Twenty-fifth.—Did you know one Porto Rico?—*Answer.* Yes.

Question Twenty-sixth.—What was his situation and general character?—*Answer.* An overseer of the chained negroes, and a borachion.

Question Twenty-seventh.—Where are the three last-mentioned persons at present?—*Answer.* They are in London, as I have heard.

Question Twenty-eighth.—As a native of this colony, and being resident in it, state its political situation at the time of its conquest by Great Britain?—*Answer.* It was in the greatest disorder, on account of the sort of anarchy that reigned in every part of the administration.

Question Twenty-ninth.—Were not rapes, robberies, murders, assassinations, conflagrations, and conspiracies, frequent and unpunished at that period?—*Answer.* Yes.

Question Thirtieth.—Did you know general Picton, and what was his character?—*Answer.* Yes, particularly; he was a man just, disinterested, and capable by his talents to govern all men.

Question Thirty-first.—Did general

Picton, to your knowledge, commit any act of cruelty during any part of his government?—*Answer.* No; if in any case he ordered punishment, it was necessary for the tranquillity of the colony.

Question Thirty-second.—As an old inhabitant of this colony and a Spaniard, what was the opinion of your countrymen of general Picton?—*Answer.* Amongst the honest part of my countrymen, he was considered as a man of considerable talents, doing honour to his own country.

Question Thirty-third.—Did or did not this colony, after general Picton took the reins of government, assume a new aspect? and describe it?—*Answer.* It is well known that the colony gained a great deal.

Cross-examined by Mr. Hayes.

First Question.—When you first saw Luisa Calderon in the gaol, in what part of it was she confined?—*Answer.* In one of the rooms above.

Second Question.—Was she confined there by herself, or were there other prisoners with her?—*Answer.* She was by herself.

Third Question.—Was she in irons?—*Answer.* She had a kind of iron in which she could stand and sit, but which could no ways molest her; I believe that that iron was only put on when I visited her.

Fourth Question.—Was that iron fastened to the floor?—*Answer.* I did not examine; I found her sitting, and the iron appeared to be secured.

Fifth Question.—Could she take exercise about the room with that iron?—*Answer.* I have already said I cannot answer.

Sixth Question.—Did you see her in gaol more than one time?—*Answer.* I saw her in gaol twice, and many times on examination before the tribunal.

Seventh Question.—Had she both those times irons on and sitting?—*Answer.* Yes; I always found her in the same situation.

Eighth Question.—Will you swear that she was fastened by those irons to the spot in which she was sitting?—*Answer.* I have already answered that I did not examine her situation.

Ninth Question.—Was she always sitting in the same place, when you saw her?—*Answer.* Yes.

Tenth Question.—Did you ever see the order by which Don Juan Jurado was sent off the island?—*Answer.* I have said it was public, and I believe it is in the instructions.

Eleventh Question.—Have you seen those instructions?—*Answer.* Yes.

Twelfth Question.—Is that order contained in them?—*Answer.* I have already said I am not sure.

Thirteenth Question.—Do you not know that all the tortures formerly applicable to criminals, consistently with the laws of Spain, had long previous to the piqueting of Luisa Calderon been repealed?—*Answer.* No.

Fourteenth Question.—Did you ever know any of the tortures you have mentioned applied to criminals in this island?—*Answer.* No, I have no knowledge of it.

Fifteenth Question.—During the government of Don Chacon, was there any piquet established in this island?—*Answer.* Not that I know of.

Sixteenth Question.—By whose order was the piquet erected?—*Answer.* I do not know.

Seventeenth Question.—What reasons have you for saying, that if you had no other proofs than the oaths of Raphael Chando and Manuel Robles, you would not believe them?—*Answer.* The same that I should have of any other vicious man of bad conduct.

Eighteenth Question.—Would you believe Porto Rico on his oath?—*Answer.* Less than the others.

Nineteenth Question.—Why?—*Answer.* Because he is even worse than the others.

Twentieth Question.—Were they not all officers of justice under you in the government of general Picton?—*Answer.* Yes.

Twenty-first Question.—Did they not generally attend punishments of all kinds?—*Answer.* Yes.

Twenty-second Question.—Were you an alcalde or magistrate during the Spanish government?—*Answer.* Yes, alcalde of the holy brotherhood, and regidor.

Twenty-third Question.—How was justice administered in those days?—*Ans.* I was alcalde of the holy brotherhood before the arrival of governor Chacon: things then went on well, and after that I have said it was a corrupt government.

Twenty-fourth Question.—Was punishment of death, transportation, or torture ever applied before sentence was completed, during the Spanish government?—*Answer.* Without final sentence I never saw any man executed; I have seen several transported during the Spanish time without process: I saw no other torture but imprisonment, in order to discover the truth from criminals.

FRAN^{co}. FARFAN.

JAMES MEANY, Interpreter.

The Court then adjourned, by proclamation, until Monday the seventeenth day of June instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-chamber in

Government-house, at Port of Spain, in the Island of Trinidad, on Monday the *seventeenth day of June*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of martial law being in force, adjourned the Court by proclamation, unto Monday the 24th day of June instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment, at the Council-chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday, the *twenty-fourth day of June*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of martial law being in force, adjourned the Court unto Monday the first day of July next.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment, at the Council-chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday the *first day of July*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of martial law being in force, adjourned the Court unto Monday the eighth day of July instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment, at the Council-chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday the *eighth day of July*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; in consequence of martial law being in force, adjourned the Court unto Monday, the fifteenth day of July instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the Island of Trinidad, on Monday the

fifteenth day of July, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor. Proclamation being duly made, *Baron de Montalembert*, a witness called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you resided here?—*Answer.* Four years less than* four months.

Third Question.—Did you know brigadier-general Picton, and what was his general character as a chief of this government?—*Answer.* I knew him very intimately; his character was the most honourable and most respected, that a chief could desire to possess in his government; I wish to declare that I came to this island to settle, in consequence of the honourable report of character and reputation, that was made to me of general Picton by his majesty's ministers his grace the duke of Portland, and the right honourable Henry Dundas.

B. D. MONTALEMBERT.

Alexander Williams, esquire, doctor of medicine, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you not a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you lived in it?—*Answer.* Upwards of seventeen years.

Third Question.—Did you know general Picton, and what was his general character as governor of this island?—*Ans.* I did know him. His general character was that of an upright just governor, and generally esteemed in the colony, particularly by the foreigners.

ALEXANDER WILLIAMS.

John Lynch, esquire, commandant of the quarter of Tacarigua, called, and duly sworn on the part of the Defendant.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you resided in it?—*Answer.* Since the year one thousand seven hundred and eighty-seven.

Third Question.—Did you know brigadier general Picton, and what was his general character as governor of this island?—*Answer.* I knew him from his first arrival; and his general character was

that of a very honest and upright man, esteemed by all good men of every country.

JOHN LYNCH.

Chevalier Louis de la Sauvagere, formerly governor of Tobago, and now superintendant of the police of the town of Port of Spain in this island, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in it?—*Answer.* Ten years.

Third Question.—Did you know brigadier general Picton, and what was his general character as governor of this island?—*Answer.* I knew him; his character was that of a man calculated to govern a colony, and knowing how to keep every man in his proper situation, and rendering justice to all.

LOUIS DE LA SAUVAGERE.

Benois Dert, esquire, called on behalf of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you resided in it?—*Answer.* More than twenty years.

Third Question.—Did you know brigadier-general Picton, and what was his general character?—*Answer.* I knew brigadier-general Picton, and his character was that of a man who made himself feared and beloved by all.

DERT.

Andrew Clarke, esquire, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in it?—*Answer.* Sixteen years and upwards.

Third Question.—Did you know brigadier general Picton, and what was his general character as governor of this island?—*Answer.* I knew him, and I believe the respectable part of the community thought favourably of his character.

ANDREW CLARKE.

James Metiver, esquire, garrison surgeon, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* I am.

Second Question.—How long have you been resident in it?—*Answer.* Since the twenty first of March one thousand seven hundred and ninety-eight.

* So in the original; "all but" should be substituted for the words, "less than."

Third Question.—Did you know brigadier general Picton, and what was his general character as governor of this island?—*Answer.* I did know him intimately, and his character was that of an able good officer, and a good governor. He was considered to have maintained the island in peace and tranquillity with great difficulty.

JAMES METIVER.

Vincent Patrice, esquire, commandant of the quarter of Ventille, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in it?—*Answer.* Eighteen years, during fourteen of which I have been employed in the service of government.

Third Question.—What was the state of the colony at the period of its capture?—*Answer.* When captain Vaughan of the Alarm frigate came here, the people of colour broke open the magazine of arms, and armed themselves, contrary to the orders of government, for many days; that when tranquillity was re-established, a large quantity of these arms remained in the possession of the people of colour; that their whole race was in a state of insubordination when the colony was captured.

Fourth Question.—Did you know brigadier-general Picton, and what was his general character as governor of this colony?—*Answer.* I knew general Picton; I considered that he at the capture of the island restored tranquillity, and caused commerce and agriculture to flourish; and as far as I was acquainted with him, he always was just.

VT. PATRICE.

Chevalier de Gannes, regidor of the cabildo, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in it?—*Answer.* Since the year one thousand seven hundred and ninety-three.

Third Question.—Did you know brigadier-general Picton, and what was his general character as governor of this island?—*Answer.* I knew him intimately; when I arrived in this colony there were a number of very bad subjects in it, and it was threatened with a general subversion of good order; brigadier-general Picton restored order, maintained tranquillity, protected justice, maintained the police, protected commerce and the importation of provisions, tripled

the value of land in cultivation; and I always knew him to be extremely just towards all the inhabitants of the colony, without any prejudice to any of the various foreigners in it.

LE CH^r. DE GANNES.

Etienne Maingot, esquire, formerly commissary of population, and now assistant in the surveyor-general's department, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in it?—*Answer.* Since January, one thousand seven hundred and ninety-three.

Third Question.—Did you know brigadier-general Picton, and what was his general character as governor of this island?—*Answer.* I knew him intimately. As a proprietor I always found protection and justice from him, and his general character was that of one who administered justice to all.

MAINGOT.

Comte de Castellet called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a resident and proprietor in this colony?—*Answer.* Yes.

Second Question.—Did you know brigadier-general Picton, and for what time?—*Answer.* I have known him very well since one thousand eight hundred.

Third Question.—What was his general character and conduct as governor of this island?—*Answer.* He merited the warmest praises of the inhabitants of this colony, and I entertained for his character the highest esteem.

C^{te}. DE CASTELLET.

On account of the lateness of the hour, the Court then adjourned by proclamation unto Monday, the twenty-second day of July instant.

GEORGE KNOX Clerk of the Court.

At the Court holden, pursuant to Adjournment, at the Council-chamber in Government-house, at Port of Spain in the Island of Trinidad, on Monday the twenty-second day of July, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant-Governor.

Proclamation being duly made; Don Pedro Reyes Bravo, the vicar-general, produced the exhibit marked E,* and hereunto annexed; and on his being duly sworn to the truth thereof, the same was filed and read.

* See it *infra*.

Juan Santiago, free coloured man, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—What is your name?

Answer. Juan Santiago.

Second Question.—Have you no other name?—*Answer.* Jacobi is my surname.

Third Question.—How do you sign your name?—*Answer.* Juan Santiago Jacobi.

Fourth Question.—Where were you born?—*Answer.* At Curacoa.

Fifth Question.—Does not the name of Jacobi signify the same as that of Santiago in the Curacoa dialect?—*Answer.* I do not know.

Sixth Question.—You are the godfather of Luisa Calderon; had she any other and what name given to her besides Luisa at the time of her baptism?—*Answer.* No.

Seventh Question.—Do you know the mother of Luisa Calderon, and where is she from?—*Answer.* I know her, and she is from Cariaco.

Eighth Question.—Was she not a slave, to your knowledge and information?—*Answer.* I do not know; I have always known her as a free woman.

Ninth Question.—Where did you first know her?—*Answer.* Here in Trinidad.

Tenth Question.—What was the real name of the mother of Luisa Calderon?—*Answer.* I only knew her by the name of Maria Calderon; she might have had one name in the church, and another in the house.

Eleventh Question.—Did you ever hear her called by any other name than that of Maria Calderon?—*Answer.* Never.

Cross-examined by Mr. Hayes.

First Question.—Do you know Luisa Antonia, the daughter of Maria Nupes?—*Answer.* No.

Second Question.—Are you sure that you never stood as godfather on the 25th of August, one thousand seven hundred and eighty-six, to a girl of that name?—

Answer. I never stood godfather to any other child but that of Maria Calderon?

Third Question.—Did Pere Antonia Alvarado christen Luisa Calderon?—*Answer.* No; father Aneses.

Question by Mr. Attorney General.—Who was the godmother with you at the baptism of Luisa Calderon?—*Answer.* Luisa Villegas. JUAN SANTIAGO.

Count de Loppinott, brigadier-general in the militia of this island, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in this island?—*Answer.* Five years and upwards.

Third Question.—Did you know brigadier-general Picton, and what was his general character as governor of this island?—*Answer.* I knew brigadier-general Picton as governor in chief of this island. I saw him govern with all dignity, loyalty, and perfect justice; with a firmness which secured the tranquillity of the colony, to the satisfaction of every honest man, and which repressed all the evil minded persons in it. LOPPINOTT.

Lazare Achard, esquire, called on the part of the Defendant, and duly sworn.—Examined by Mr. Attorney General.

First Question.—Are you a proprietor in this island?—*Answer.* Yes.

Second Question.—How long have you been resident in it?—*Answer.* Eighteen years.

Third Question.—Did you know brigadier-general Picton, and what was his general character as governor of this island?—*Answer.* I knew brigadier-general Picton as a just man and of integrity; and I shall always owe him an eternal gratitude for having preserved my life and fortune by his courage, activity, and abilities, in times when we were threatened with fire and the malevolence of the negroes and other vagabonds, who only waited for a favourable moment to cut our throats. L. ACHARD.

The Honourable John Nihell, esquire, member of his majesty's council of this island, and judge of the court of consulado, &c. called on the part of the Prosecution, and duly sworn.—Examined by Mr. Hayes.

First Question.—How long have you resided in this colony?—*Answer.* Between nineteen and twenty years.

Second Question.—At the time of the conquest of the island by the British, did murders, rapes, conflagrations, and other crimes of that description, go unpunished?—*Answer.* I never heard of any.

Third Question.—Was you an officer of justice at that time?—*Answer.* I was alcalde of the first election.

Fourth Question.—If such crimes had been committed, would you not have been the person most likely to have heard of them? and would you not, by virtue of your office, have prosecuted them for those offences?—*Answer.* I should certainly have heard of them, but I was not the person most likely to hear of them; for these criminal cases were in general tried before the auditor in the governor's tribunal; criminal causes were generally tried before the governor and auditor;

and although the alcaldes were competent to take cognizance of criminal causes, I never heard of any criminal cause being carried before them during the Spanish time.

Fifth Question.—From your knowledge of general Chacon, then at the head of the government, do you believe that he would have permitted a man charged with crimes such as before stated to have remained in the island without trial? and in case of conviction, would he not have ordered punishment?—*Answer.* I certainly found from my knowledge of governor Chacon, and believed him utterly incapable of any such injustice; we all know that he could not have ordered punishment, without the approbation of the audience of Carracas; but as far as in him lay, he certainly would have ordered the execution, and would not have dared to act otherwise.

Cross-examined by Mr. Attorney General.

First Question.—Had you any commission or instructions from sir Ralph Abercrombie; if yea, produce them?—*Answer.* Yes.

[The witness then produced the originals and the exhibits marked F and G*, as true copies thereof.]

Second Question.—What was the situation political and civil of this island previous to the conquest of it?—*Answer.* For several months, and even years, immediately preceding the conquest, the English and other good people of the colony considered themselves in constant danger of assassination, or of being guillotined.

Third Question.—Was not you yourself shot at, and nearly murdered in the streets?—*Answer.* I certainly was, on the eighteenth of May, one thousand seven hundred and ninety-six, in company of several respectable inhabitants, while in the actual exercise of magisterial duties, I being then alcalde of the second election. A Negro was mortally shot near me, another was wounded, and a relation of mine who stood close to me received a ball in the skirts of his coat.

Fourth Question.—Were the perpetrators of these outrages apprehended, and punished by the Spanish government?—*Answer.* They certainly were not; but this proceeded from their immense numbers in the colony, and the trifling force which the government had for its protection.

Fifth Question.—Do you mean to say, then, that there existed in this colony a considerable faction which overawed it?—*Answer.* I certainly mean to say so;

and that faction was so very considerable and so powerful that Mr. Chacon, after the island was taken, often assured me that peace and quietness could not be preserved in the colony with a garrison of fewer men than three thousand regular British troops.

Sixth Question.—Were not the French very numerous, and the then revolutionary principles of France very strong among all colours and classes in the colony?—*Answer.* Most certainly.

Seventh Question.—Did not brigadier general Picton preserve order and tranquillity in the colony, after the capture?—*Answer.* He certainly did.

Eighth Question.—To what do you ascribe it?—*Answer.* To the firmness of his government, and his apparent determination to suffer no such principles to remain in the colony; in consequence of which, in a very short time, the principal leaders of the faction before described disappeared, and the others of the party remained quiet and peaceable.

Ninth Question.—To what do you ascribe the present flourishing situation of this colony?—*Answer.* I certainly ascribe it to the firmness and uniform conduct of general Picton, in giving ample protection to all good and peaceable subjects, and driving from it all of a contrary character.

JOHN NIELL.

Maria Calderon called on the part of the Defendant, and duly sworn.—

Examined by Mr. Attorney-General.

First Question.—Were you born a slave?—*Answer.* No, I was born free.

Second Question.—What was your mother's name?—*Answer.* Domingua Nuñez.

Third Question.—Why was she called Domingua Nuñez?—*Answer.* Because her parents might be of that name.

Fourth Question.—Was your mother a slave?—*Answer.* No, my mother is free.

Fifth Question.—Was your mother born in wedlock?—*Answer.* No.

Sixth Question.—Were you born in wedlock?—*Answer.* No; I am called Calderon because my father, who was called Calderon, was going to marry my mother, but afterwards it was broke off.

Seventh Question.—Who baptized your daughter Luisa?—*Answer.* Father Añeses.

[An entry of baptism, made in page one hundred and fifty-eight of the Registry of the baptisms of the old inhabitants of this colony, of the date of the sixth of September, one thousand seven hundred and eighty-six—as follows:

“Luisa Antonia Parvula—Eu seis dias de Sept. de mil set ochenta y seis anos yo Fr. Jph. Ant. Alberado cura coadjutor de la parroq. del pu. de Espana certifico que en esta parroq. bautese solemnemente puse

* See them *infra*.

"oleo y chrisma a Luisa Antonia de doce dias nacida hija de Maria Nuñes parda libra fueron sus Padri- nus Juan Santiago y Luisa Antonia a Quienes adverty su oblig^{on}. y esperit^l. parentesco y para que conste lo firmoy de ello doy ffee—FR. JPH. ANT^o. ALVARADO,"—was read to Maria Calderon, the witness; she said that Padre Alvarado could not make such declaration.]

Seventh Question.—Was not Juan Santiago and Luisa Antonia the sponsors of your daughter Luisa?—*Answer.* Yes, Luisa Antonia is the name of Luisa Villegas.

Eighth Question.—Did not you say that your daughter Luisa was born on the anniversary of St. Louis?—*Answer.* Yes, on the twenty-fifth of August.

Ninth Question.—Was Juan Santiago godfather to any other of your children?—*Answer.* No.

Tenth Question.—Was not Luisa Calderon christened by the name of Luisa Antonia the name of her godmother?—*Answer.*—Yes, she was christened Luisa Antonia.

The mark of ✕ MARIA CALDERON.
JAMES MEANY, Interpreter.

The Court then adjourned to Thursday, the first day of August next.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council-chamber in Government-house, at Port of Spain in the Island of Trinidad, on Thursday the first day of August, in the forty-fifth year, &c. [as before].

Present

His Excellency the Lieutenant Governor.
Proclamation being duly made; *Nicholas Saint Pe*, esquire, late alcalde of the second election, called and duly sworn.—Examined by Mr. *Attorney General*, on the part of the Defendant.

First Question.—What is your age and profession?—*Answer.* My age is fifty-six years and upwards, and my profession that of a planter.

Second Question.—Where you born?—*Answer.* At Bayonne in France.

Third Question.—How long have you been resident in this colony?—*Answer.* Twenty-eight years and upwards.

Fourth Question.—Had you any public employment during the Spanish government?—*Answer.* I was regidor in 1784 and 1787; I was also alcalde de Barrio the two following years, and commandant of the quarter of La Brea afterwards.

* So in the original.

Fifth Question.—Had you any public employments after the conquest of the island, and what were they?—*Answer.* I was member of a committee of seven inhabitants, which were established here for the judging Negroes accused of poisoning; I believe it was in the year one thousand eight hundred. I was alcade in ordinary, elected by the cabildo, in the year eighteen hundred and two, and I was re-elected in 1803. I am not now in any public employment.

Sixth Question.—Was it by your orders as alcade, that the proceedings in the case of Luisa Calderon, were delivered to Mr. Begorrat?—*Answer.* They were once delivered to him on his petition to Mr. Black and myself; and afterwards a second time, by me and Mr. Langton, in the presence of Mr. Castro.

Seventh Question.—Was not an examination of those proceedings made by Mr. Begorrat, in your presence, and in that of Mr. Langton, and also of Mr. Castro?—

Answer. Yes, a few days before the meeting of this Court.

Eighth Question.—Did Mr. Begorrat make any and what observations to Mr. Castro, in your presence and in that of your colleague, on the proceedings?—*Answer.*—He made many on the doubling down of leaves in the process; he asked Castro if he had any objection to declare the whole truth relative to that business. Mr. Castro replied that he had none, that he would declare the truth before any tribunal whatever; Mr. Begorrat then said, "Very well, sir; I observe that you have made some omissions, and some negligences. You took the declarations yourself in rough, and I see that it is in another person's hand-writing; that they are written fair. I do not perceive either that you have entered in the process four extrajudicial declarations, of which two were of Luisa Calderon and the other two of Carlos Gonzales; I do not either perceive in the heading of the declaration the age of Luisa, though she was questioned to that matter."

Ninth Question.—Did Mr. Castro make any and what answers to these observations?—*Answer.* Mr. Castro answered to Mr. Begorrat: "Sir, you ought to recollect that at that time we were very busy with judicial proceedings of the most difficult nature, and principally the business of Walton's tavern, about which we were obliged to take a great number of declarations from many persons implicated, particularly Mr. Higham. We took the declarations in rough to finish them soon, and my clerk copied them afterwards fair, and I am sure that he has forgot to put the age; and it is certain that she was questioned as to her age, and that she declared that she was more

than fourteen." I remember that Mr. Begorrat then replied: "But, sir, you ought to have the rough drafts; be so kind as to look for them, as they may be wanted." Mr. Castro answered, "that is impossible, my clerk did not return them to me, and I believe he has destroyed them."

Tenth Question.—Did Mr. Begorrat threaten, or in any way menace Mr. Castro, or behave improperly to him?—*Answer.* Oh, no; never.

Eleventh Question.—Does not Mr. Castro claim to be a regidor of Cabildo, and under what pretence?—*Answer.* Yes, he claims, because he bought the office at public vendue, when it was sold for the benefit of the king of Spain. He was obliged by the laws to procure the confirmation of the place within the term of five years. He has never received such confirmation, and when it is not received the situation becomes vacated.

Twelfth Question.—Are you a graduated advocate?—*Answer.* No.

Thirteenth Question.—How came you to accept the employment of alcalde without being graduated?—*Answer.* Because planters are nominated to the situation, and obliged to accept it under penalties and incapacities.

Fourteenth Question.—In the several criminal and civil suits which you have decided as alcalde, did you ever call in a graduated assessor?—*Answer.* It was impossible, there being none.

Fifteenth Question.—What did you consider, after the conquest, as the superior tribunal of the colony?—*Answer.* General Picton; because the audience of Carracas had no further jurisdiction, and on account of the obligation under which we were placed to refer to the approbation of general Picton.

Sixteenth Question.—Were any instructions of sir Ralph Abercrombie's known to you respecting that point?—*Answer.* It was public and notorious, that general Abercrombie had given instructions to Mr. Picton, but I did not see them; but I judged from the ample instructions given to Mr. Nihell by sir Ralph Abercrombie.

Seventeenth Question.—What was the political situation of the colony, and the state of its interior police at the time of the conquest?—*Answer.* The political state of the colony was very afflicting; the police was inefficient, though it had been very good some time before. It was very dangerous at the time of the conquest to do any acts of severity in police, because the government did not think they had sufficient force to repress disorders; and when complaints were made of any aggravating nature, the government persuaded them to patience. The cause of this was a numerous popula-

tion, consisting of various characters of different opinions, and the bad doctrines which had been adopted here among the free and enslaved, and among some whites also.

Eighteenth Question.—Did not flagrant crimes pass with impunity?—*Answer.* When I first became resident in the town until 1789, there were many assassinations; some were punished and some were not; masters were murdered by their slaves, and whites who had assassinated whites; since then, until the capture of the island, I remained on my estate.

Nineteenth Question.—Did you know general Picton, and what was his general character?—*Answer.* I knew him since one thousand seven hundred and ninety-eight; and he was a man of good morals and practice; frank, impartial, disinterested, zealous for his majesty's service, and for the preserving the colony. There are very few inhabitants of those who were here before the capture of the colony, who do not believe they owe to his vigilance their whole security.

Question Twentieth.—Was he of a wicked and cruel disposition?—*Answer.* I never saw any instances of it.

Question Twenty-first.—Do you know whether the application of the torture exists under the Spanish law?—*Answer.* It did exist, and does exist, as I never heard it had been abolished.

Question Twenty-second.—As long resident in this colony, holding public employment under the Spanish and English governments, was you acquainted with Manuel Robles and Raphael Chando, and what was their general character?—*Answer.* I knew them alguazils of the Cabildo while I was a member of it. They were men of bad enough morals, often drunk.

Question Twenty-third.—Do you know Juan Montes, and what was his character?—*Answer.* I knew him for two or three years; he was a troublesome and turbulent man.

The witness was then cross-examined by Mr. Hayes on the part of the Prosecution.

Question.—Were Manuel Robles and Raphael Chando usually employed during the government of general Picton as alguazils to attend punishments?—*Ans.* Yes. N^o. SAINT PE.

On account of the lateness of the hour, the Court then adjourned unto Monday the 5th day of August instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in

Government-house, at Port of Spain in the island of Trinidad, on *Monday the fifth day of August*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made; on account of public business, the Court adjourned unto Thursday the eighth day of August instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber in Government-house, at Port of Spain, in the island of Trinidad, on *Thursday the eighth day of August*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made, the honourable *Philip Langton*, esquire, alcade of the first election, was called by Mr. *Attorney General* on the part of the Defendant, and duly sworn.

Question First.—What is your age and profession?—*Answer.* About forty, and I am a planter.

Question Second.—Where were you born?—*Answer.* In the kingdom of Ireland, in the city of Waterford.

Question Third.—How long have you been resident in this colony?—*Answer.* About eighteen years.

Question Fourth.—Had you had any public employment in this colony under the Spanish government?—*Answer.* I was perpetual alcade, provincial mayor, by commission from his Catholic majesty, since about the year seventeen hundred and ninety, and commandant of the quarter of Naparima, at the time of the capture of the island; I was also regidor of the Cabildo.

Question Fifth.—Had you any public employments after the conquest of the island, and what were they?—*Answer.* I was member of his majesty's council, and continued in the employment I held before; I am now alcade of the first election.

Question Sixth.—Was not an examination of the proceedings in the business of Luisa Calderon made by Mr. Begorrat in your presence, and in that of Mr. Saint Pe and the escrivano Castro?—*Answer.* Mr. Begorrat called at the tribunal, and requested that the proceedings in the case of Luisa Calderon might be brought up before me and Mr. St. Pe, by the escrivano Castro, to peruse them; and on examining them, he perceived there were

some deficiencies; four extrajudicial declarations which had been taken by Mr. Castro, in the presence of Mr. Begorrat, in the rough, did not appear there. He asked him what was the reason of that; particularly observing, that the age of Luisa Calderon was omitted. The reason Castro alleged was, that it was the eve of the Christmas holidays; and that they were very much occupied in taking the declaration of Mr. Higham and some others, regarding a business at Walton's tavern; that his clerk had been charged with the copying them fair; that his clerk had certainly done it very improperly, and that there were many omissions and deficiencies. Mr. Begorrat then asked him whether he had not the rough copies? Mr. Castro answered, No, they had been torn up. Mr. Begorrat then further observed to him, that it might probably be necessary to make a further investigation of the business, and asked him whether he had any objection to declare every thing respecting it. He said, No, he had none, and that whenever called upon, he would declare the circumstances.

Question Seventh.—Did Mr. Begorrat threaten, or in any way menace Mr. Castro, or behave improperly to him?—*Answer.* Not in the smallest degree; on the contrary, they talked the matter over very friendly.

Question Eighth.—Does not Mr. Castro claim to be a regidor of Cabildo, and under what pretence?—*Answer.* He pretends to say he is one; but I cannot consider him in that light.

Question Ninth.—Are you a graduated advocate?—*Answer.* No.

Question Tenth.—How came you to accept the employment of alcade without being such?—*Answer.* At the unanimous request of the board of Cabildo. A graduated advocate, I believe, cannot be alcade; there is an assessor generally appointed to dictate to the alcade the law.

Question Eleventh.—What did you consider after the conquest as the superior tribunal of the colony?—*Answer.* I considered that the tribunal of the governor and the alcaldes in ordinary as the superior tribunals.

Question Twelfth.—Are you not a proprietor of a sugar estate in this island, and was not you so at the conquest of the island?—*Answer.* I am, and have been so thirteen or fourteen years.

Question Thirteenth.—What was the political situation of the island, and the state of its interior police at the time of the conquest?—*Answer.* Anarchy and confusion, and I believe considered by all well-disposed people as on the brink of ruin, for want of energy in the govern-

ment. The Spanish governor declared to me, shortly after the conquest, that it was impossible for the British governor to keep the island in subjection, and prevent it undergoing the same fate as the other colonies without a powerful force, either of three thousand or five thousand men.

Question Fourteenth.—Did you know general Picton particularly, and what was his general character?—*Answer.* I had the honor to be intimately acquainted with general Picton; and all the respectable characters that I have ever heard talk of him in this colony join me in opinion, in considering him an active intelligent and disinterested magistrate, warmly attached to the interest of his sovereign, and of this colony.

Question Fifteenth.—Did you ever know him guilty of any act of cruelty?—*Ans.* Never.

Question Sixteenth.—Did the colony bear any, and what different aspect on his taking the command?—*Answer.* A great alteration for the better; public tranquillity and public confidence was restored, and both agriculture and commerce flourished to a degree unprecedented in this colony.

Question Seventeenth.—As magistrate in the different tribunals, were you acquainted with Manuel Robles, Raphael Chando, Porto Rico and Juan Montes, and what were their different characters?—*Answer.* The three former were alguazils of very infamous vile characters; of Juan Montes I cannot say any thing bad to my own knowledge.

Question Eighteenth.—Would any tribunal in this colony have taken the oaths of these men?—*Answer.* No. I would not certainly, nor do I believe any other tribunal would.

The Witness was then cross-examined by Mr. Hayes, on the part of the Prosecution.

Question First.—When Mr. Castro was called before you and Mr. St. Pe, as judges, did you not know, that a writ of Mandamus had arrived in this island, directed to the lieutenant-governor, in the matter of Luisa Calderon and general Picton?—*Answer.* I had heard, as a matter of conversation, that the business was to be investigated before general Hislop.

Question Second.—Did not Mr. Begor-rat state to you, that such a writ had arrived in this country, and that Castro would in consequence be examined as a witness before the lieutenant-governor?—*Answer.* I don't recollect such conversation; I naturally supposed that every person concerned in it would be examined before general Hislop.

Question Third.—Was there, at the time

of Luisa Calderon being piqueted, or is there at this time, any person presiding at the Spanish tribunal having a thorough knowledge of the Spanish law, and capable of judging in matters of life and property without an assessor?—*Answer.* I am not competent to answer the question.

Question Fourth.—Do you not attribute the flourishing aspect of the colony as much to the influx of English capital and English industry, as to the government and exertion of brigadier-general Picton?—*Answer.* I think the introduction of English capital joined to the exertion and activity of brigadier-general Picton was the cause of it.

Question Fifth.—Did not Raphael Chando, Manuel Robles, and Porto Rico act as alguazils during the government of general Picton, and did they not usually attend public punishments?—I don't know, I can't say particularly; they were alguazils, and I believe it is customary for alguazils to attend public punishments.

Question Sixth.—When you say that as a magistrate you would not take the oaths of Chando, Robles, and Porto Rico, do you mean to say that you have ever seen a record of conviction for any crime that would preclude them giving evidence on their oath?—*Answer.* As they were never brought before me, I did not investigate into their characters; but from such authorities as I could not doubt, I considered them as culprits.

PH^p. LANGTON.

On account of the lateness of the hour, the Court then adjourned to Monday, the twelfth day of August instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment at the Council Chamber, in Government-house, at Port of Spain in the island of Trinidad, on Monday the *twelfth day of August*, in the forty-fifth year, &c. [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made, Mr. Abraham Pinto called by Mr. Attorney General on the part of the Defendant, and duly sworn.

Question First.—How long have you been in this colony?—*Answer.* Twenty-two years.

Question Second.—Do you know Luisa Calderon?—*Answer.* I know the girl called Luisa, but I do not know how she got the name of Calderon.

Question Third.—Do you mean by the girl called Luisa, the girl that was impri-

soned on account of the robbery of Pedro Ruiz?—*Answer.* I do.

Question Fourth.—Do you know her age?—*Answer.* I supposed that she was of the age of my son, which is nineteen years old on the fourteenth of this month.

Question Fifth.—From what did you form that opinion of her age? when did you first see her?—*Answer.* In my own dwelling-house; she was at school to a Mrs. Hasleton, who is now Mrs. Salazar. I saw her every day when she was in her mother's arms, in the year seventeen hundred and eighty-six, about the months September, October, or November, when she was a sucking child; she frequented our house.

Question Sixth.—Was your son baptized, and when?—*Answer.* In the year seventeen hundred and eighty-six.

Question Seventh.—By whom?—*Answer.* By the padre Alvarado.

Question Eighth.—Have you got the certificate of the registry of the baptism of your son; if yea, produce it.

The witness then produced the exhibit marked H,* hereunto annexed, which was filed and read.

Question Ninth.—Did you procure it, and from whom?—*Answer.* I did, from the priest Don Josef Maria Angeles.

Question Tenth.—Do you know the godmother of Luisa, and what was her name?—*Answer.* I do not recollect her, I might have known her.

Question Eleventh.—Did you know general Picton, and what was his general character?—*Answer.* His public and private character was always very good, as far as I was acquainted with him.

The Witness was then cross-examined by Mr. Hayes on the part of the Prosecution.

Question First.—Is your recollection perfectly clear as to your having seen Luisa in the year seventeen hundred and eighty-six?—*Answer.* Yes, the latter end of the year.

Question Second.—Has not Maria Calderon, the mother of Luisa, other daughters?—*Answer.* I do not know any other but Luisa.

Question Third.—Are you positive that the Luisa you speak of is the same person who was imprisoned for the robbery of Pedro Ruiz?—*Answer.* I am.

A. PINTO.

Don Francisco Tebles, corregidor of Arima, called by Mr. Attorney General on behalf of the Defendant, and duly sworn.

Question First.—Did you know a wo-

man called Luisa Calderon; if yea, where first?—*Answer.* I first knew her in Port of Spain; I cannot recollect the date; I have known her for a long time.

Question Second.—Did you know her as living with Pedro Ruiz, and in what situation?—*Answer.* Yes, as a public woman living with a man.

Question Third.—How long to your knowledge did she live with Pedro Ruiz, before she was put into gaol?—*Answer.* I cannot say exactly; between two years and two years and a half.

Question Fourth.—Did you know of what age she was when she first lived with Pedro Ruiz?—*Answer.* She could not have less than thirteen years.

Question Fifth.—Were you present at the confrontation of Luisa Calderon, Carlos Gonzalez, and the witnesses concerning the robbery of Pedro Ruiz? Where did it take place, and when* passed?—*Answer.* I was present; it took place in the house where the robbery was committed. When Luisa was asked whether she had committed the robbery, she answered then, "it was Carlos Gonzalez who committed it." He denied it; but she insisted, and then related some circumstances of what had passed. "You recollect that you came in by this door, that I opened it to you, and that in such place you had connexion with me, and that it was through such a place that you carried the trunk." She might have said many other things which I did not notice.

Question Sixth.—Did Luisa appear sick, hurt, indisposed, or lame?—*Answer.* No, she appeared in good health.

Question Seventh.—From whence did she come, and where did she go at that time?—*Answer.* I do not know.

Question Eighth.—Do not you know that she came from the gaol at that time?—*Answer.* I heard so. Soldiers were with her, one file.

FRANCIS TEBLES.

JAMES MEANY, Interpreter.

Donna Inacia Espinesa called by Mr. Attorney General on behalf of the Defendant, and duly sworn.

Question First.—Did you know Luisa Calderon, and who was her godmother?—*Answer.* Yes, I knew Luisa Calderon; I heard her mother say, and Luisa also, that Luisa Antonia Villegas was her godmother.

Question Second.—Where is Luisa Antonia Villegas?—*Answer.* She is dead.

Question Third.—When did she die?—*Answer.* Not long ago, since the capture of the island.

* So in the original; what should be substituted for when.

* See it *infra*.

The Witness was then cross-examined by Mr. Hayes on the part of the Prosecution.

Question First.—How long ago is it since you have heard from Luisa's mother and herself, that Luisa Antonia Villegas was the godmother of Luisa?—*Answer.* She was at school along with my daughter two years before the capture of the island; it was about that time.

Question Second.—With whom were they at school?—*Answer.* At my house.

MARIA IGNACIA ESPINESA.

JAMES MEANY, Interpreter.

Senor Cayetano Guevara called by Mr. Attorney General on behalf of the Defendant, and duly sworn.

Question First.—Where were you born, and what is your business?—*Answer.* I was born at Carracas, and am a planter.

Question Second.—At what period did you settle in this colony?—*Answer.* The latter end of the year seventeen hundred and eighty-six.

Question Third.—Did you know Luisa Calderon, the daughter of Maria Calderon?—*Answer.* I knew Luisa, but I do not know that she was called Calderon; she was a little, little thing when I arrived.

Question Fourth.—Did you know the mother of Luisa?—*Answer.* Yes.

Question Fifth.—What was her name?—*Answer.* I have heard her called Maria Cariaco.

Question Sixth.—Was the Luisa, the daughter of Maria Cariaco, the person who was imprisoned on account of the robbery of Pedro Ruiz?—*Answer.* I knew Luisa, she that was in prison for the robbery, who is now in London, and knew her mother also: it was the same person.

Question Seventh.—When you arrived in this island from Carracas, in seventeen hundred and eighty-six, what was the age of the Luisa of whom you speak?—*Answer.* I cannot tell her age; she was a little, little thing when I went to her house: it was to buy tobacco.

The Witness was then cross-examined by Mr. Hayes on the part of the Prosecution.

Question First.—Was you intimate with the mother of Luisa?—*Answer.* No.

Question Second.—Do you not know that she had other daughters besides Luisa?—*Answer.* I knew two others, much older than her.

Question Third.—Will you positively swear that the same little child you saw in the year seventeen hundred and eighty-six is the same person who was

imprisoned for the robbery of Pedro Ruiz?—*Answer.* Yes, I know her; I swear and swear again that it is the same.

CAYETANO GUEVARA, ✕ his mark.
JAMES MEANY, Interpreter.

On account of the lateness of the hour, the Court then adjourned unto Friday the sixteenth day of August instant.

GEORGE KNOX Clerk of the Court.

At a Court holden pursuant to adjournment, at the Council Chamber in Government-house, at Port of Spain in the Island of Trinidad, on Friday the sixteenth day of August, in the forty-fifth, &c. [as before].

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made, Mr. Attorney General on behalf of the defendant, produced the exhibit marked I.* and the exhibit marked K,† both hereunto annexed. And after that Don Pedro Reyes Bravo, the vicar-general, had been duly sworn to the truth thereof the same were severally ordered to be filed and read, and they were filed and read accordingly.

Mr. Attorney General then on the behalf of the defendant informed the Court that he had no further evidence to offer on the part of the defendant; and the clerk of the court informed the Court that he had given notice to Mr. Hayes on the part of the prosecution that the proceedings and examination of the witnesses would be this day closed; the Court therefore directed the proceedings to be closed, and adjourned *sine die*.

GEORGE KNOX Clerk of the Court.

At a Court holden at the special instance and request of Charles Augustus Hayes, on the part of the Prosecution, in the Council-chamber in Government-house, at Port of Spain in the Island of Trinidad, on Thursday the fifth day of September, in the forty-fifth year, &c., [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made, and Mr. Hayes not attending; upon the motion of Mr. Attorney-general on the part of the Defendant, alleging that C. A. Hayes, esq. on the behalf of the prosecution did on Friday, the third day of May last, inform this Court that he had no other witness to call, except one Flores who then was and now is on the Spanish

* See it *infra*.

† See it *infra*.

Main, should arrive before the return of the said mandamus to his majesty in his court of King's-bench; and that on Friday, the sixteenth day of August last, this Court directed the said mandamus and the examinations of the witnesses to be returned and closed: and also, that the said C. A. Hayes, did on Saturday, the twenty-fourth day of August last, inform this Court that he had other witnesses to examine on the part of the prosecution, and requested that this day might be appointed for that purpose: and he, the said Mr. Attorney-general, having attended accordingly, on the part of the defendant, and the said C. A. Hayes not attending, nor any of the said witnesses: *It is ordered*, that unless the said witnesses be produced in this court on Friday, the seventh day of September instant, at ten o'clock in the forenoon, to be examined, the examinations and other matters, as well on the part of the Prosecution as of the Defendant, shall and will be peremptorily and finally closed, unless cause shall be shown to the contrary at this present court.

The Court then directed immediate service of the above rule Nisi on Mr. Hayes. After waiting some time, the Court adjourned unto Friday, the sixth day of September instant, at ten of the clock in the forenoon.

GEORGE KNOX Clerk of the Court.

At a court holden pursuant to adjournment, at the Council-chamber in Government-house, at Port of Spain in the Island of Trinidad, on Friday the sixth day of September, in the Forty-fifth year, &c., [as before.]

Present

His Excellency the Lieutenant Governor.

Proclamation being duly made, and Mr. Hayes not attending, the deputy provost marshal, Frederick Brown, esq. was called on by the Court to prove the service of the said rule Nisi; and he having proved the service of the said rule on Mr. Hayes on the said fifth day of September instant, and the said rule Nisi being read; Mr. Attorney-general, on the part of the defendant, moved, that the said rule be made absolute, upon which *his Excellency* said,—

“In consequence of the request of Mr. Hayes, on the part of the prosecution, I perhaps extended the powers vested in me by the mandamus, and after this court had been adjourned *sine die*, allowed him yesterday the opportunity he requested of producing fresh testimony in this prosecution. It was a matter of favour, as no affidavit whatever was offered on the part of the prosecution as to the necessity

of another meeting of this court, and I was left entirely ignorant of the names of the witnesses to be produced. A court was held yesterday, and neither Mr. Hayes nor any witnesses attended; and on the motion of Mr. Attorney-general, the rule Nisi was granted by me, and the same was duly served on Mr. Hayes. I have now waited upwards of an hour for Mr. Hayes to produce his witnesses, or to show cause against the rule Nisi, and neither they nor he have attended, nor has he given any intimation to the Court that it was not in his or their power so to do. When I consider that the first court for the examination of the witnesses respecting this prosecution was held on Thursday, the sixth day of December last, and that it was then settled that the witnesses on the behalf of the prosecution should be produced and examined prior to those on behalf of the defendant, and that the period from the twelfth day of January unto the third day of May was occupied in the examination of the witnesses on the part of the prosecution, and that on that day Mr. Hayes gave notice to this court, that the evidence on the part of the prosecution, with the exception of Flores, who is still on the Spanish Main, was concluded; and that during that period, every possible indulgence and delay were allowed to Mr. Hayes and the witnesses he produced; and that on the said third day of May, Mr. Attorney-general commenced the examination of the witnesses on the part of the defendant, and that in those examinations no new matter has been introduced, he having confined the evidence on the part of the defendant, to the legality and subject matter of the proceedings had against Luisa Calderon, her age, the character of the defendant, and that of the witnesses produced against him, and the state of this island at the time of its conquest; and as the defendant must have materially suffered by the great length of time during which the mandamus has remained here, and as there will be to-morrow or the next day a most desirable opportunity of sending it home:

“When I consider these circumstances, I cannot but think that Mr. Hayes is trifling with this court, and seeks to procrastinate the trial of the cause in his majesty's court of King's-bench. I do therefore order that the examinations of the witnesses, and other matters relating to this prosecution be peremptorily and finally closed, and that this Court stand adjourned, *sine die*.”

By the COURT.

T. HISLOP, Lieutenant Governor
of the Island of Trinidad.
GEORGE KNOX Clerk of the Court.

Annexed to the preceding Document were the following Exhibits marked A to K.

EXHIBIT A.

[Vide *antè* p. 234.]

TRINIDAD.

THE KING,

On the Prosecution of Luisa Calderon,
against

THOMAS PICTON, Esquire.

Notice is hereby given, that, on Thursday, the sixth day of December next, at ten o'clock in the forenoon, a Court of Session will be held at the Council Chamber in Government-house, for the examination of witnesses, and the receiving other proofs concerning the matters charged in the aforesaid indictment.

By Order of the COURT.

GEO. KNOX, Clerk of the Court,
and Assessor *pro tempore* to
his Excellency.

TRINIDAD.

EL REY,

En la Procecuion de Luisa Calderon,
contra

THOMAS PICTON, Escudero.

Por este se avisa al publico, que el Jueves, seis de Decembre proximo venidero a las dies de la maenana habra Corte de Cession que se tendra en la Casa de Gobierno, en la Sala del Consejo "Para al examen de testigos y receivir otras pruebas relativas a los puntos de que sele hace cargo en la antedicha accusacion."

Par Mandado de la CORTE.

(Firmado)

GEO. KNOX, Secretario de la
Corte, y Assessor *pro tempore*
de S. Ex^o.

Diego Meany
Iterp^o. de Gob^o.

TRINITE.

LE ROY,

Dans la poursuite de Luisa Calderon,
contre

THOMAS PICTON, Ecuyer.

Par ces presentes le public est averti que Jeudi, six Decembre prochain, à dix heures du matin, il aura Cour de Session, qui se rendra à l'Hotel du Gouvernement, en la Salle du Consel, pour audition de temoins et recevoir les autres preuves relatives aux objets dont il est chargé dans la dite accusation.

Par ordre de la Cour.

(Signé)

GEO. KNOX, Griffeur de la Cour,
et Assesseur *pro tempore* de
S. Ex.

JAQUES MEANEY.
Interprete de Gouv^t.

EXHIBIT B.

[Vide *antè* p. 236.]

TITLE.

In the Year 1801.

CRIMINAL CAUSE *relative to the Theft of Two Thousand hard Dollars from Pedro Ruiz.*

Before the Judge of first appointment
or Senior Justice.

Notary.—CASTRO.

[*Act of Process.*]—In the Port of Spain in the windward Island of Trinidad, on the *twenty-second day of the month of December, in the year one thousand eight hundred and one*, his honour D. Hilario de Begorrat, common or ordinary judge by first appointment thereof, declared;—That whereas on the seventh day of the present month, between six and seven o'clock in the evening, Pedro Ruiz appeared in the court of the government, complaining of having that instant been robbed of two thousand hard dollars in specie, the lock of one of his trunks having been broke open, which trunk was deposited in the middle room of three apartments, held or possessed by him, near the marine and government parade or square, and having, to effect the same forced away one of the planks of the side of the house towards the sea; in consequence of which, his excellency gave orders to secure the persons of Luisa Calderon and her mother Ma. Calderon, domestics of the said Ruiz, and also Carlos Gonzalez, and Pedro Jph. Perez, partner of the said Ruiz; which cause his excellency has transmitted to his honour the judge for the adjudication and termination of the same; accordingly, he pronounced that he ought to give orders, and did give orders, to proceed to the summary examination of the witnesses that may be obtained; also of such persons who may know any thing relative to the cause in question, and especially the nearest neighbours to the said house; and when accomplished in due and proper form, the said examinations to be filed, that decision may take place thereon conformable to justice. And whereas, by virtue hereof, his honour thus pronounced and ordered; he also signed these presents, all which I, the under-written notary, attest.

(Signed) HIL^o. DE BEGORRAT, Royal
Notary Public to the Go-
vernment.

Before me FRANCISCO DE CASTRO.

[*Deposition of Theresa Alen.*]—Where-
upon immediately afterwards the ordi-
nary judge or senior justice, ordered
Theresa Alen to appear personally before
him in court, said *Theresa Alen* being a

free mulatta, residing in this port, and next-door neighbour to the house of Pedro Ruiz, to whom, by the means of an interpreter, and in the presence of me the notary was administered, in due form, an oath on God our Lord, and on a Sign of the Cross; and thereon she promised to relate the truth to the best of her knowledge, with respect to whatever she might be interrogated: and the contents of the aforegoin act havin g been read over to her, and the other circumstances that offered having been related to her, she deposed—That on the seventh day of the present month, it being about half past six o'clock in the evening, she saw Carlos Gonzalez, a free mulatto, pass by; that he wished the deponent a good evening; that she then saw him enter the house-door of Pedro Ruiz, and having conversed with or spoke to Luisa Calderon, he immediately went away, and retired the back way of the said house of Pedro, being towards the beach and to the eastward; and that this is the whole within her knowledge, and that she can depose; for although she has heard it reported, that the said Pedro was robbed on the afore-said day, she knows not by whom; and this she deposed to be truth on her afore-said oath, taken by her, and she confirms and ratifies the same, and furthermore, in case of need, that she will depose the same at a future time, and that she is twenty-five years of age. The aforegoing was read to her, and she declared, that the same was truly expressed; that she can neither add or diminish therefrom, and she did not sign this deposition, as she said she could not write, but it was signed by his honour and by the interpreter, which I attest.

(Signed) BEGORRAT.
JUAN BERMUDEZ,
Interpreter.

Before me FRANCISCO DE CASTRO.

[Deposition of *Josef Rodriguez*.]—Immediately afterwards, for the same purposes, his honour ordered Josef Rodriguez to appear personally before him in court, who by trade keeps a liquor and chandler's shop near the house of Pedro Ruiz; to whom, in the presence of me, the notary, his honour administered the oath, in due form, on God our Lord, and on a Sign of the Cross, and thereon he promised to depose the truth, to the best of his knowledge, with respect to whatever he might be interrogated; and the contents of the act at the beginning having been read over to him, and all other circumstances that offered, to ascertain the truth in the cause in question, he deposed—That on the seventh day of the present month, he being in his shop,

there came the mulatta Luisa Calderon, house-keeper of Pedro Ruiz, after the firing the evening-gun at sun-set; that she entered into conversation with deponent's wife, and Luisa invited her to take a walk as far as the bridge, beyond the church, and that his said wife refused; that at this moment, Carlos Gonzalez approached them, and the deponent asked him to sit down, which the said Carlos declined, saying that he was in haste; that he notwithstanding stopt sometime, for Cuno Puentas inquired of Gonzalez the state of the vessel newly bought by him, and he replied, that said vessel prospered, and that he was then fitting her out, and at this time Luisa Calderon went away home to the house of Pedro Ruiz, and immediately afterwards Carlos disappeared, without his observing which way he went; that he has heard it reported that Pedro Ruiz had been robbed, but does not know by whom; and that this is the whole within his knowledge, and that he can depose with respect to the interrogatories put to him, and that the same is the truth, on the oath which he has taken, and he ratified and confirmed the same, and in case of need, will depose the same at a future time; that he is thirty-five years of age. The aforegoing was then read to him, and he declared that the same was truly expressed; that he can neither add or diminish therefrom. He signed these presents, together with his honour, which I attest.

(Signed) H^o. BEGORRAT.
JOSEF RODRIGUEZ.

Before me FRANCISCO DE CASTRO.

[Deposition of *Cyprian Villa Nueva*.]—Immediately afterwards his honor ordered personally to appear in his court, Cyprian Villa Nueva, a free mulatto of this place, to whom his honour administered the oath by means of an interpreter, in due form, on God our Lord, and on a sign of the Cross, whereon he promised to depose the truth to the best of his knowledge, with respect to whatever he might be interrogated; and the contents of the act at the beginning having been read over to him, and all other circumstances mentioned, that tended to investigate the truth, he deposed—That he has heard it publicly reported, that on the seventh day of the present month, at about the time of evening-prayer, Pedro Ruiz, a dealer in tobacco, had been robbed of a sum of money; that at about half past six o'clock in the evening of the same day, after the firing of the evening gun, he, the deponent, was sitting at the door of the house of Florian Joctis, near the dwelling of Ruiz, and being in company,

with her, also with Hilario Arnaud and Honore Birot, who neither saw Carlos or Luisa; but that immediately after the robbery, the said Arnaud acquainted the deponent, that he had seen Carlos Gonzalez pass by towards the house-passage of Pedro Ruiz, and that he stopt there a considerable time, and that he afterwards saw him come out, and saw said Carlos go towards his own home; and that this is the whole within his knowledge, and all that he can depose with respect to the interrogatories put to him; that the same is the truth on the oath which he has taken, and he ratified and confirmed the same, and in case of need, will depose the same at a future time, and that he is forty-two years old; the foregoing was then read to him, and he declared that the same was truly expressed, that he could neither add or diminish therefrom, and he did not sign these presents, by reason of his declaring that he could not write, but the interpreter did, together with his honor, which I attest.

(Signed) BEGORRAT.
JUAN BERMUDEZ,
Interpreter.

Before me FRANCISCO DE CASTRO.

[Deposition of the black woman, *Jpha. Ma.*—Immediately afterwards his honor ordered personally to appear Josefa Maria the slave of D^r. Isabella Dragan of this place, to whom, by means of an interpreter, and in the presence of me the notary, his honour administered the oath in due form, on God our Lord, and on the Sign of the Cross, and thereon she promised to depose the truth to the best of her knowledge with respect to whatever she might be interrogated; and the contents of the act at the beginning, having been read over to her, and the other circumstances also being mentioned, she deposed—That on the seventh day of the present month, at about half past six o'clock in the evening, she saw Carlos Gonzalez come from the quay, and on his getting as far as the Quatro Esquinas (four corners), where Don Antonia Teston lives, he went up the upper street, and at about the middle of the said street he turned back again, and stopt at the street-door of Florian Joctis, with his arms folded; and that a few moments after, there passed by Luisa Calderon, the house-keeper of Pedro Ruiz, when immediately Carlos followed her; but she did not see whether or not he entered the house of the aforesaid; and that this is the whole within her knowledge and that she is able to depose with respect to the interrogatories put to her; and that the same is

the truth on her aforesaid oath, and that she is of full age, being twenty-five years old. The foregoing was then read to her, and she declared the same to be truly expressed, having nothing to add thereto, neither could she diminish therefrom, and she did not sign these presents, as she could not write: his honor signed hereto, which I attest.

(Signed) BEGORRAT.
JUAN BERMUDEZ,
Interpreter.

Before me FRANCISCO DE CASTRO.

[Deposition of the negro *Topen.*]—In continuation, his honor ordered personally to appear before him in court the negro Topen, a slave of Don John Smith, to whom was administered the oath, in due form, on God our Lord, and on a sign of the Cross; and thereon having promised to depose the truth to the best of his knowledge, with respect to whatever he might be interrogated, he was then questioned relative to the contents of the foregoing act. And he deposed, That on the seventh day of the present month, immediately after the gun being fired, he saw the mulatto, Carlos Gonzales, making water close to the place where the robbery of Pedro Ruiz was committed, on that same day; and that, after he had done making water, he saw the said Carlos enter the house passage of Ruiz, and did not see him come out afterwards; and that this is the whole within his knowledge and that he is able to depose in reply to the questions put to him; and that the same is the truth, on his aforesaid oath; and he confirms and ratifies the same, and in case of need will repeat it at a future time; also, that he is twenty-five years old, a little more or less; And he did not sign these presents, declaring that he could not write. The same was signed by his honour, as also by the interpreter, which I attest.

(Signed) BEGORRAT.
CARLOS A TELLINEAU,
Interpreter.

Before me FRANCISCO DE CASTRO.

[Deposition of *Joseph Arnaud.*]—In continuation, Joseph Arnaud having been summoned, to whom his honor, by means of an interpreter, and in the presence of me, the notary, administered the oath, which was accepted in due form on God our Lord, and on a sign of the Cross; and thereon he promised to depose the truth to the best of his knowledge, with respect to whatever he might be interrogated; and accordingly, on his being questioned relative to the tenor of what is expressed in the deposition of Cyprian Villa Nueva, he deposed—That the said citation is true, which was read

to him, from him the witness having been present when Carlos Gonzalez entered the house passage of Pedro Ruiz, on the said seventh day of the month, at about the time of evening prayer, and where he remained a considerable space of time, and which he afterwards acquainted Cyprian; and also, that when he saw the said Carlos go out from the said house passage, he went towards his own home, to the eastward of that of Peter Ruiz. And that this is the whole within his knowledge, and that he is able to depose to the questions that have been put to him, and that the same is the truth on his aforesaid oath, and he confirms and ratifies the same, and in case of need, he will repeat it at a future time; further, that he is forty-two years of age. The foregoing was then read to him, and he declared that the same was truly expressed, having nothing to add thereto, neither could he diminish therefrom; and this deposition he signed, together with his honor and the interpreter, which I attest; and after the same was read to him, he deposed, that when he saw the said Carlos go out from the house passage of the said Ruiz, on the day aforesaid, as he only saw his back, he did not remark whether his hands were engaged, nor whether his jacket was buttoned; but that he knows, that on the other day the said Carlos passed by the door of the house of Florian Juctis, he having seen him, and that he stopt a short space of time in conversation, and that he was somewhat confused, all which I attest.

(Signed) BEGORRAT.
JOSEPH ARNAUD.
Before me FRANC^o DE CASTRO.

[Deposition of *Honore Birot*.]—Immediately afterwards, the judge in this cause, attended by me, the notary, went to the house of *Honore Birot*, also with the interpreter, the said *Birot* being bed-ridden with the palsy, to whom his honour, by the means of the said interpreter, and in the presence of me, the notary, administered the oath on God our Lord, and on a sign of the Cross; and thereon he promised to depose the truth, to the best of his knowledge, with respect to whatever he might be interrogated; and accordingly, on his being questioned relative to the tenor of the foregoing act, the citations and the other circumstances, he deposed—That on the seventh day of the present month, being about the time of evening prayer, the deponent heard the passage door of the house of *Pedro Ruiz* being opened, and at about a quarter of an hour afterwards he heard blows, as of the breaking open a trunk, and that a short time after, in like manner, he heard the iron bolt drawn; that on the day following he was

acquainted by *Hilario Arnaud*, that *Carlos Gonzalez*, was in custody for the said robbery, and that this is all he knows, being forty-eight years old. And the same was read over to him, when he deposed, that the same was truly expressed, and he did not sign this deposition, not knowing how to write: the same was signed by his honor, and by the interpreter, which I attest.

(Signed) BEGORRAT.
CARLOS TELLINEAU,
Interpreter.
Before me FRANC^o DE CASTRO.

[Deposition of *Nely*.]—In continuation, the said judge ordered personally to appear before him in Court, *Nely*, the female slave of *Theresa Alen*, to whom his honor, by the means of the interpreter, administered the oath, which was accepted in due form, on God our Lord, and on a sign of the Cross, and thereon she promised to relate the truth, to the best of her knowledge, with respect to whatever she might be interrogated; and on her being questioned relative to the tenor of the act at the commencement of these proceedings, and also concerning the other circumstances, she deposed—That on the seventh day of the present month, it being about half-past six o'clock in the evening, after the evening gun being fired, she saw *Carlos Gonzalez*, who went into and stood on one side of the house passage of *Pedro Ruiz*, and made water there, and at this time or moment, the deponent asked him why he should make water there, being the place where kitchen articles were usually put; that thereupon the said *Carlos* without speaking a word went away from that place, and went further up the passage, and stood on some timber or planks, and seemed as if he was making water there, when she, the deponent, retired. This is the whole she knows, and all she can depose, with respect to the questions put to her; that the same is true on her aforesaid oath, and she confirms and ratifies it, and in case of need, will repeat the same at a future time; that she is eighteen years old. And on the foregoing deposition being read to her, she declared that the same was truly expressed, and that she could neither add nor diminish; she did not sign these presents, not knowing how to write, as she deposed to that effect. His honour and the interpreter both signed the same, which I attest.

(Signed) BEGORRAT.
JUAN BERMUDEZ,
Interpreter.
Before me FRANC^o DE CASTRO.

[Deposition of *Gaspar Diaz*.]—In continuation, the said judge ordered

personally to appear before him in court, Gaspar Diaz of this place, to whom his honour, in the presence of me, the notary, administered the oath, which he accepted in due form, on God our Lord, and on a sign of the Cross; and thereon he promised to depose the truth to the extent of his knowledge, with respect to whatever he might be interrogated; and on his being questioned relative to the contents of the foregoing act, and also about the other circumstances mentioned, he deposed—That he, the deponent, being at the house of Dⁿ Francisco de Salazar, at Plaza de Monte, about the time of evening-prayer, on the seventh day of the present month, that Carlos Gonzalez came there, and conversed about his schooner, that the said Carlos had purchased; that he, the said deponent, departed from the said house, and at a short distance he observed that Carlos also had come away; that having joined him, Carlos asked him, the deponent, whether he was going home, and having answered in the affirmative, at the same time inviting him to pass the evening at the house of Juan the Catalan, agreeable to the custom of him, the deponent, that said Carlos replied, he would not take any drink whatever; with which answer the deponent went into the said house, and a short time after he came out again, and on not seeing the said Carlos, he inquired about him of the wife of the said Catalan, and she told him that he was gone away. This is all he knows, and that he can depose with respect to the questions put to him, and is the truth on his oath, as aforesaid, and he confirms and ratifies the same, and in case of need will repeat it at a future time; that he is thirty-one years of age; that the said deposition is truly expressed, and that he can neither add nor diminish: he did not sign it, deposing that he could not write: his honour signed the same, which I attest.

(Signed)

BEGORRAT.

Before me FRANC^o DE CASTRO.

[Deposition of Antonio Jph, a mulatto.]

—On the *twenty-third day of the aforesaid month* and year, his honor the judge ordered personally to appear before him in court, Antonio Josef, a free mulatto of this place, to whom the said judge, in the presence of me, the notary, administered the oath, which he accepted on God our Lord, and on a sign of the Cross; and thereon he promised to depose the truth to the extent of his knowledge, with respect to whatever he might be interrogated; and on his being questioned concerning the contents of the act, inserted at the commencement of these proceedings, he deposed—That all he knows is, that he was told by Nicolas Ybarrarte, a

free mulatto, when passing by the house door of Carlos Gonzalez, the said Nicholas called out to him, the deponent, "see how Carlos passes without knowing me, but he must remember how he used my master, Dⁿ. Pedro Ybarrarte when at Curacoa." This is all he knows and that he can depose with regard to the questions put to him, and is the truth on his aforesaid oath, and he confirms and ratifies the same, and in case of need, he will repeat it at a future time; that he is thirty-nine years of age, and this said deposition was read to him, which he deposed to be truly expressed, and that he can neither add nor diminish; and he signed hereto together with the said judge which I attest.

(Signed)

BEGORRAT.

ANTONIO JOSE ALCAL.

Before me

FRANCISCO DE CASTRO.

[Deposition of Don Francisco Salazar.]

—On the aforesaid day, his honor, the said judge, ordered personally to appear before him in his court, Don Francisco Salazar of this place, to whom his honor in the presence of me, the notary, administered in due form the oath on God our Lord, and on the sign of the Cross; and thereon he promised to depose the truth, to the best of his knowledge, with regard to whatever he might be interrogated; and on his being questioned concerning the contents of the act inserted in the commencement of these proceedings, and also about the other circumstances mentioned, he deposed—That he knew from having heard it publicly spoken of, that Pedro Ruiz, the seller of tobacco, had been robbed some days ago; and he also knows, that in the year ninety-seven, the said Pedro was then in the service of Don Vicente Sanda, in a huckster's and liquor-shop, when one morning the window of the said shop was discovered open, which said shop was under the management of the said Pedro, and his trunk broke open, he saying that he had been robbed of eight Joes, or Portugal pieces, and he attributed this robbery to one of the slaves of the said Sanda, whose name was Sanguilot, whom a few days before his master had withdrawn from the said shop, in consequence of sundry differences or disputes that had arisen between the two. Pedro judicially proceeded against him, but the said robbery never was ascertained. That some few days afterwards, on another morning when it broke, the window was again found open, and a door also, and the trunk of the said Pedro robbed, who found it open the same morning on the beach, with the money taken out that had been deposited therein, but all his clothes and linen with a pair of silver buckles remained therein;

in consequence of this last affair, Sanda discharged him from the shop. This is all he knows, and that he can depose with respect to the questions that have been put to him, and is the truth, on his aforesaid oath, and which he confirms and ratifies, and in case of need will repeat it at a future time; that he is twenty-eight years of age. The foregoing was read to him, and he declared that the same was truly expressed; that he could neither add nor diminish; and he signed the same together with the said judge, which I attest,

(Signed)

BEGORRAT.

FRAN^{co} SALAZAR.

Before me

FRANCISCO DE CASTRO.

[Deposition of the negro *Pedro*.]—

Immediately for the purposes as aforesaid, the said judge ordered personally to appear before him in his court, Pedro, a native negro, the slave of Pedro Ruiz, to whom his honour, in the presence of me the notary, administered the oath in due form, on God our Lord, and on the sign of the Cross: and thereon he promised to depose the truth to the best of his knowledge, with regard to whatever he might be interrogated; and on his being questioned concerning the contents of the foregoing act, and also about the other circumstances attending the same, he deposed—That on the seventh day of the present month, at about noon-day before dinner, he, the deponent, went with his master's cart to the city of St. Joseph, to carry sundry provisions for the troops there; that at half-past seven o'clock at night of the same day, he arrived back again, and at the house of Luisa, the house-keeper of Pedro Ruiz, who lives near the church, and having met her at the door of the said house, she inquired of him the deponent where his master Pedro was; to which he replied, that she who was at the house-door, ought to know better than him where his master was, for he, the deponent, was but just arrived from the city of St. Joseph; that after this, he went to take a walk, and to get some drink at the shop of Beltri, a black woman, near the Green-market, and on going out of the house of the said Beltri he went towards his master's house, and a little before getting there he heard a negro cry out (whom he did not know) that a robbery had been committed; and on his arrival at his said master's house, he found a great many persons therein, and the said Pedro told him, the deponent, that some one had robbed him; that being within the said house, together with his master, he and his master searched the same, and they found no partition or wall whatever broke open, and only the lock of the trunks: This is all he knows, and all

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that he can depose to the questions that have been put to him, and that the same is the truth on his aforesaid oath, which he confirms and ratifies; and in case of need he will repeat the same at a future time; that he is twenty-six years of age; and on the foregoing being read to him, he declared, that he could neither add thereto, nor diminish the same; and he did not sign this deposition, he declaring that he could not write: his honor signed it, together with the interpreter, which I attest.

(Signed)

BEGORRAT.

JUAN BERNARDES,

Interpreter.

Before me

FRANCISCO DE CASTRO.

[Deposition of *Pedro Josef Perez*.]—

On the said day, month, and year, in the common prison therein, the said judge ordered to be brought into his presence Pedro Josef Perez, a prisoner, to whom his honour, in the presence of me, the notary, administered the oath, which said prisoner accepted in due form, on God our Lord, and on a sign of the Cross, and thereon he promised to declare the truth, to the best of his knowledge, with regard to whatever he might be interrogated; and on his being questioned relative to the contents of the foregoing act, and also respecting the other circumstances, he was interrogated in the manner as follows: *Interrogatory*.—What his name was? Where born and residing? His age and calling?—He deposed, in answer, That he was a native of the island of Teneriffe; by business a trader; and that he was from thirty-one to thirty-two years old, and that in truth his name was Pedro Josef Perez.

Interrogated.—Where he was on the seventh instant? How employed? With what persons he conversed? At what hours, and on what subject he discoursed, and what reports had he heard relative to the robbery committed on Pedro Ruiz?—He deposed, That on the said seventh day he was employed at his own home in the selling tobacco and other articles; that he did not go out the whole day into the street; that between six and seven o'clock that evening, it was publicly reported to him, that Pedro Ruiz, his partner, had been robbed, and that after dark the said Pedro acquainted him, by means of a negro, concerning the robbery; that immediately afterwards he went to the house of Pedro, but before he got there he met Carlos Gonzalez at the corner of the outhouses of Pedro, and having got close to each other, said Carlos asked him the deponent, what news, or what was the matter. He, the deponent, then told him that his partner had been robbed, and the deponent then pursued his way

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to the house of the said Pedro, leaving Carlos in the place where he first saw him, without observing which way he afterwards took; that he saw his excellency the governor searching or looking about the said house, and after he was gone, the deponent then went in, and sat down with Pedro, in the same room where the robbery had been committed in conversation on the subject, when Carlos Gonzalez came in, and the same conversation on the subject of the robbery was continued, Carlos having sat down with them, who afterwards getting up, he, Carlos, called Pedro aside out into the Government-square, and they actually went to some distance, and the deponent followed and joined company with them in the said square; and Carlos inquired of Pedro, when, and at what hours his negroes returned; when Pedro told him, they had but just arrived with the cart from St. Joseph, and that the robbery could not have been committed by them; and to get more information they went into the house of a neighbour who was ill in bed, and by means of a mulatto who attended him, they asked the said sick person at about what time he had heard the noise in the house of Pedro, and the sick person replied, at the exact time of the bells for evening-prayer; and that the noise which he heard was like that of a forcible entry into a house, with which answer Carlos went one way, and the deponent with Pedro went another. That one afternoon, about the time of the siesta (afternoon's sleep) subsequent to the robbery, Carlos Gonzalez came to the dwelling-house of the deponent, and sitting down, Carlos said to him, what do you think has happened?—he then related that the judge now present with the officers of justice had been that morning to his house, and had searched the same, in consequence of the robbery of Pedro; and at this instant Pedro came in, when he, the deponent, said to Carlos, why should you be uneasy, as you are clear and innocent, God keep you so, and Carlos repeated to him the same words; and then the deponent said to him in a free manner, Never mind me; in case they should call on me, I will acquaint them what I saw on the night of the robbery: then Carlos said, "What, are you against me?" and the deponent answered, No: then Carlos went away; the deponent remaining alone with Pedro, they conversed on the same subject. This is all that he knows, and that he can depose in reply to the interrogatories put to him; and is the truth, on his aforesaid oath, and he confirms and ratifies the same, and in case of need will repeat the same at a future time; that his age is as hereinbefore mentioned. And on this said deposition

being read to him, he declared the same to be correctly written; that he could neither add or diminish; and he signed these presents, together with the said judge, which I attest.

(Signed)

BEGORRAT.

PEDRO JOZE PEREZ.

Before me FRANCISCO DE CASTRO.

[Deposition of *Luisa Calderon*.]—

At the Port of Spain, on the *twenty-second day of the same month and year*, his honor, the judge of first appointment, proceeded to the prison wherein *Luisa Calderon*, a free Mulatta, was confined, for the purpose of taking her deposition; to whom the said judge, in the presence of me, the notary, administered the oath in due form, on God our Lord, and on a sign of the Cross, and thereon she promised to depose the truth, to the best of her knowledge, to whatever she might be interrogated; and, accordingly, being questioned respecting the contents of the aforesaid act, and the other circumstances that had occurred, with the intent to ascertain the truth relative to the cause in question, she fully denied knowing who were the perpetrators of the robbery; in consequence thereof his honor ordered this deposition to be suspended till a more convenient opportunity, and he signed hereto, which I attest.

(Signed)

BEGORRAT.

Before me FRANCISCO DE CASTRO.

[*Act.*]—In consequence of the strong suspicions his honour entertains of the Mulatta *Luisa Calderon*, a domestic of Pedro Ruiz, concealing the truth relative to the aforesaid robbery, expressed in these proceedings; and his honour being persuaded, that she will discover the truth of the matter by means of a slight torment being inflicted on the said *Calderon*: And whereas his honour is not invested with power to execute the same, his excellency the governor and captain-general of this island must be made acquainted hereof, with the summary of this process by virtue of this document, to the intent that his excellency may determine, as may appear to him justice, the usual and requisite forms for that purpose to be adopted and observed by the notary in this cause; and in pursuance hereof his honor thus decreed and ordered; and he signed hereto, which I the underwritten notary attest this day, the twenty-second of the aforesaid month and year.

(Signed)

BEGORRAT.

Before me FRANCISCO DE CASTRO.

Whereupon I the said notary proceeded to the tribunal of the said governor and captain-general of this island; and

the usual forms having been observed, I made known to his excellency the foregoing act, as also the summary in conformity as decreed, which I attest.

(Signed) CASTRO.

[Order.]—Apply the torture to Luisa Calderon.

(Signed) TH. PICTON.

His excellency the governor and captain-general of this island of Trinidad thus ordered, and he signed the same on the twenty-third day of December, one thousand eight hundred and one.

Before me FRANCISCO DE CASTRO.

I transmitted these proceedings to the court of his honor, the judge of first appointment.

(Signed) CASTRO.

[Order for the Torture.]—At the Port of Spain, in the windward island of Trinidad, on the twenty-third day of December, one thousand eight hundred and one, his honor the ordinary judge of first appointment, having seen these acts of the cause in question, together with the order given by his excellency the governor and captain-general of this island, by which he directs a slight torment to be inflicted, for the purpose of investigating the truth relative to the robbery: He accordingly has decreed, and hereby orders, that the same shall be carried into execution on this same day, to obviate further delays that may prejudice this cause. At the same time, his honor observed, that whereas the said Luisa Calderon did not appear to be twenty-five years old, his honor therefore reserves his intention of nominating for her a guardian or advocate. His honor thus pronounced and ordered, and signed hereto, which I attest.

(Signed) BEGORRAT.

Before me FRANCISCO DE CASTRO.

[Service.]—Whereupon I, the notary, in the presence of the said judge, attending at the public prison, and in a room thereof, I made known the foregoing order for the torture to Luisa Calderon; who being made acquainted with the contents thereof, she said, that she did not know who had committed the robbery on Pedro Ruiz, and she confirmed what she had before asserted, which I attest.

CASTRO.

[Act of Torment on Luisa Calderon.]—And thereupon, immediately, and being in the said room of the public prison of this said Port, his honor, the judge, in the presence of me, the notary, for the purpose of putting in force the torment as described in the foregoing order, administered an oath on God our Lord, and on the sign of the Cross, in due form,

to Luisa Calderon; and the same being done according to law, his honor, for the first time, admonished her to tell the truth relative to the persons who had been parties in the said robbery, and in what manner the same was committed; for that otherwise the torment would be inflicted on her to which she had been condemned, and that in case she should sustain any hurt or injury, or that should she die, the same must be on her own head, and not to be attributed to his honor, who only endeavoured to investigate the truth: and she said and deposed as before, and his honor again admonished her, for the second and third times; when she answered, that she did not know who were the delinquents that committed the robbery. Whereupon his honor, the said judge, ordered the said Luisa to be conveyed to the place appropriated for the said torment, where were present the officers of justice, Jose Flores and Rafael Chando, and there being a piquet with a rope hanging from the ceiling, being the instrument for executing the torture. On sight thereof, the said judge admonished her, for the last time, to relate the truth; for that should she not comply, the said torture would be inflicted on her, and would be on her own head, and could not be attributed to his honor. And on the aforesaid being made known to her, she replied, that she could not depose any thing else than what she had done before. Then his honor ordered the said officers of justice to uphold and bind her, as till then she was in no way bound or fettered; and it being about half past eleven o'clock, as by the dial of a watch or clock, his honor the judge questioned the culprit what she knew of the robbery committed on Pedro Ruiz, in what manner it was perpetrated, and bidding her speak the truth; to which she replied, that she knew nothing more than she had said before; then the said judge ordered the aforesaid officers to tie the said Luisa up by one hand perpendicularly, with one of her feet resting on a piquet of wood; and to tie the other foot and hand together; in which posture the said Luisa cried "Ay, ay," repeating the same several times, calling on God and the Holy Virgin, saying, "I do not know any thing, my lord judge; if I did I would have told it." The said judge again bid her tell the truth, and she replied, "I do not know any thing. Most Holy Virgin assist me." Then the said judge ordered her to be suspended in such a manner, that her great toe touched or rested on the said piquet, and in this situation she remained, repeating her former expressions; then the said judge ordered the rope to be drawn in such a manner, that she should

be suspended without her toe touching the said piquet; at which time she desired them to loosen her, and that she would relate the truth; and accordingly she confessed that Carlos Gonzalez, with whom she once only had had a carnal connection, notwithstanding the intimacy with Pedro Ruiz, that it was him that had stole the money from the said Ruiz; and this she knows from having been an eye-witness thereof. When she came a second time to the house of the said Pedro, she opened the door with the key that she had,—she lighted a candle, and having heard blows, as of breaking open a trunk, she retired further back, put out the light, locked the door, and concealed herself in the passage close to where Carlos had moved the said trunk, whom she also saw while he was taking out the sundry bags in which the money was contained, and which he carried off; and at the time that Carlos went away, she concealed herself the more that he might not see her; that she does not know where the said Carlos has deposited the said money; that he has not given any portion thereof to her; neither did Carlos ever propose to her the committing the said robbery; and on being reminded and questioned from what motive, when she saw Carlos committing the robbery, she did not cry out, nor lodge an information to a magistrate; she answered, that she did not know what she was to do. In like manner she was questioned whether Carlos ever had communication and entrance into the house of Pedro; she replied, that she remembers that one day, about four or five months ago, that the said Carlos, towards night, came and entered the second room in the house of Pedro, and stood at the door of the same room wherein the robbery was committed; and said Carlos requested Pedro to change him some gold coin for Pistrens; and Pedro, opening the trunk which has been since broke open, and wherein he kept his money, he took out a bag, and changed him the gold coin. And in the procuring this said confession the said Luisa was about one hour on the piquet. The rope was then loosened, and she was released therefrom. And that this is the truth on her oath that was administered to her, as aforesaid, and his honor ordered this proceeding to remain in its present state, that the same may be continued whenever suitable. She was then comforted, restored, and strengthened, in the presence of his honor, they then left her secured and locked up, with a pair of irons on, in the same room,—all which I attest, and his honor signed hereto.

(Signed) H. BEGORRAT.

Before me FRANCISCO DE CASTRO.

[Confirmation of the foregoing deposition.]—At the Port of Spain, in the island of Trinidad, on the *twenty-fourth day of the month of December*, in the year one thousand eight hundred and one, his honor, the ordinary judge of the first appointment, proceeded to the public prison of this said port, it being about half past eleven o'clock in the morning, and in the room where Luisa Calderon was imprisoned, the said judge, in the presence of me, the notary, administered an oath on God our Lord, and on a sign of the Cross, in due form, which was fully and legally accepted. She thereon promised to relate the truth, for the purpose of confirming the confession made the day before, while under torture; by order of his honor, I read over the same, word for word, to her, which I attest; and she being made acquainted therewith, she deposed, that what had been then read to her and is here written was the truth, and is the same that she expressed while under torture, which she ratifies and confirms; and in case of need, will repeat it afresh; that she is about fourteen years of age; she did not sign hereto, as she could not write. His honor signed hereto, which I attest.

(Signed) BEGORRAT.

Before me FRANCISCO DE CASTRO.

[Second act of deposition on oath.]—On the aforesaid day, and immediately afterwards, his honor the ordinary judge of the first appointment, caused to be brought into his presence the aforesaid Luisa Calderon, and an oath being first in due form administered to her, she promised to relate the truth; in pursuance thereof, the judge required her to make a true deposition, and to declare whether she had not been an accessory with Carlos Gonzalez in committing the said robbery, and also, to confess where the said money was deposited. She declared that she never had communicated in any way whatever with the said Carlos concerning the commission of the said robbery, neither did she know where the said money was deposited; whereupon the said judge again admonished her to relate the truth, for should she not do it, she should be again placed in the torture: she answered, that she absolutely knew nothing more, upon which answer, the officers of justice were ordered by him, the judge, viz. Jose Flores and Rafael Chando, to place her on the piquet, which they accordingly did, with the assistance of the gaoler, Juan Baupista Vallot, binding up her left hand with the rope, that hung from the ceiling of the room, elevating her till she had one foot on the piquet, and the other foot and hand were tied together; in

which position the aforesaid Luisa called on the Holy Virgin several times, and said, "Senior Carlos has the money in the way I told his honor the judge yesterday; but I do not know where he has deposited it. Senior Carlos will not tell the truth, hoping to get clear—he is the cause of my sufferings—he thinks of getting off in this world, but he will not get off with God in the other. God reward Senior Carlos—he is the cause of my sufferings;"—and his honor the judge bid her speak the truth, and answer where the money was, saying, that she was concerned in the robbery with Carlos—Confess it, and you shall be released from the torture; and repeating the same words, when his honor perceiving that she was about to faint, notwithstanding her pulse was still regular, and she had not been tied up quite twenty minutes, he ordered the officers to loosen her, and to release her from the piquet; and having restored her in the presence of the said judge, he left her locked up in the same room ordering this act to be suspended, that the same may be continued at a future time, when the same may be suitable, and his honor signed it, which I attest.

(Signed) BEGORRAT.

Before me FRANCISCO DE CASTRO.

[*Examination of Gonzalez and Calderon, face to face.*].—In the Port of Spain, on the twenty-ninth day of December, in the year one thousand eight hundred and one, his honor, the ordinary judge of the first appointment, together with me the notary, proceeded to the public prison; and being arrived there, he ordered Carlos Gonzalez and Luisa Calderon to be brought before him, when they were both duly sworn on God our Lord, and on a sign of the Cross, and thereon they promised to depose the truth, whereupon the said Calderon firmly maintained her former deposition, and repeating it to Gonzales, that he was the person who had stole the money from Pedro Ruiz, by breaking open the trunk and carrying it off, and which the said Carlos knew was in the trunk that he broke open, from going one night to change some money with Pedro for small silver, and which accordingly Pedro changed for him, Carlos being present when the said Pedro opened the trunk. To which Carlos replied, that the same was false testimony, that Luisa had deposed with regard to the robbery, of which he was innocent; and as to the circumstance of changing the money, it is very true, for he went and procured the change from Pedro, but that he never observed whence the money was taken for the said change; with this the said act was concluded, which his

honour ordered to be annexed to the proceedings, and I attest the same.

(Signed) FRANCISCO DE CASTRO.

[*Note.*].—That by order of his honour the judge in this cause, the houses of Carlos Gonzalez, of Luisa Calderon, and of Pedro Ruiz were searched; that of Carlos was searched twice, and the others once each, and the said search at the house of Pedro was attended by Carlos and Luisa, with his honour the judge, and the officers of justice, Joseph Flores and Raphael Chando; to the said four acts I attended, and attest the same.

(Signed) CASTRO.

[*Note.*].—That at the foregoing interview the aforesaid Carlos confessed to having once had a carnal connexion with Luisa Calderon, and that though he had formerly denied it on oath, said denial proceeded from the fear of royal justice; and by judicial order I insert this note, which I attest. (Signed) CASTRO.

To his Honour the Judge of the first Appointment: The Petition of Don Pedro Jose Perez of this place now confined in the public prison: sheweth—

That in consequence of the incidents in the criminal cause carrying on against Carlos Gonzalez for the theft of two thousand hard dollars, committed on my partner, Pedro Ruiz, I beg leave to represent to your honour, in the manner as may best avail, that by reason of my being innocent, having made my deposition, and of my having a warehouse with sundry articles of provisions, the same being perishable commodities, and which are daily deteriorating in value, to the heavy prejudice of my affairs. I humbly hope, from justice, that your honour will be pleased to order my release from the prison wherein I am confined, on giving and providing requisite security, tendering for that purpose and I hereby offer as my bail Don Ignacio Ponce, residing in this port. I therefore request and beseech your honour will direct and order accordingly, the same being Justice which I implore. At same time, I make oath that this my petition has no malicious or sinister intent, and the needful, &c.

(Signed) PEDRO JOSE PEREZ.

[*Decree.*].—On the petitioner's providing the security offered by him, release him from the prison wherein he is confined. (Signed) BEGORRAT.

His honor the ordinary judge of the first appointment in this island of Trinidad, thus decreed and signed thereto in the Port of Spain, on the twenty-sixth

day of December, in the year one thousand eight hundred and one.

Before me FRANCISCO DE CASTRO.

[*Notification.*].—I thereupon proceeded to the public prison of this port, and notified the foregoing decree to the party personally, which I attest.

(Signed) CASTRO.

The security or bail tendered was duly given in, in the office of my department, date as foregoing. (Signed) CASTRO.

[*Service.*].—And immediately I notified duly to the gaoler, that he was to set the said Don Pedro Perez at liberty, which he accordingly did, and I attest the same.

(Signed) CASTRO.

[*Another.*].—In the year one thousand eight hundred and two on the *second day of the month of January*, I the notary delivered over these acts to the court of his honour the judge of the first appointment, Don Josef Francisco Farfan, observing the usual and legal forms on this occasion.

(Signed) CASTRO.

[*Act.*].—Seen—Proceed to lay an attachment on the effects of Carlos Gonzalez, placing the same in deposit, and Don Miguel Pietry is hereby appointed depository for that purpose, and the notary of these proceedings must certify relative to Carlos Gonzalez and Luisa Calderon, their being actually in prison; and when done, as also the citations served, that are still pending, the acts must be laid before me, that I may pronounce thereon as befitting justice.

(Signed) FARFAN.

His honor the ordinary judge of the first appointment, thus decreed and signed on the second day of January, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I duly cited Don Miguel Pietry, which I attest. (Signed) CASTRO.

I certify, that on this day, being the second of January in the aforesaid year, I proceeded to the public prison of this port, and I there saw Carlos Gonzalez in a cell with a pair of irons on, and Luisa Calderon also in same prison with another pair of irons on.

FRANCISCO DE CASTRO.

[*Attachment laid on the effects of Carlos Gonzalez.*].—In the Port of Spain, in the windward island of Trinidad, on the second day of January, in the year one thousand eight hundred and one*, his honor the judge in this cause, the chief alguazil or officer of justice of this port being absent, attended by the officers,

Joseph Flores and Rafael Chando, and also by me the notary, proceeded to the house of Carlos Gonzalez, and there being therein the lawful wife of the said Gonzales, together with Don Geromo Bennaza, to them was administered an oath, in due form, on God our Lord, and on the sign of the Cross, and thereon they promised to relate the truth, and make a full discovery of all the effects belonging to the said Carlos, and in consequence thereof an attachment was laid on the following:

Firstly—Three parcels of gold, the first thereof weighing three hundred and ninety nine hard dollars, and seven rials	399	7
The second weighed four hundred hard dollars and seven rials.	400	7
And the third one hundred and ninety four hard dollars and seven rials	194	7
	995	8

Item. A silver cover.

Item. A bond or security from Don Bartholome Pontel for thirty-eight Pesos.

Item. A book-case or secretary.

Item. A trunk containing his linen.

Item. A table.

Item. Four small chairs.

Item. Sundry household furniture.

Item. A Spanish horse.

Item. Two slaves, names Juan and Petronila.

Item. Eleven beasts, consisting of oxen, cows and bullocks; these on half account and property with the said Don Geromo.

Item. A saddle, with its furniture.

Item. A schooner and its boat, now at anchor in this port.

Item. Twenty lumps of tallow.

Item. A horse and a mare in Canony meadow, in halves with said Bennaza.

Which said effects were deposited with Don Miguel Pietry, who duly acknowledged the delivery thereof, made to him to his content and satisfaction, and he promised to retain the same, and that the same should be at all times forthcoming, at the orders of the said judge in this cause, or any other that should be competent to demand and require the same. And there being no other effects to attach as per the declaration of the said Bennaza and the said Juana, his honor ordered this act to be suspended, having left in the possession of the said Juana the household furniture, with the horse, and the beasts in the meadow in the charge of the said Don Geromo, as per order of the said judge, but to be answerable for the same to the said depository, and

* Error in original; should be 1802.

they all of them signed hereto, together with his honor the said judge, all which I the undersigned notary attest.

(Signed) JOSEPH FRANCISCO FARFAN.
MIGUEL PIETRY,
GERONIMO BENNAZA.
JUANA TALAVERA.

Before me FRANCISCO DE CASTRO.

[Summons served on Juan de la Rosa.]

—In the Port of Spain, in the island of Trinidad, on the *fifteenth day of the month of January*, one thousand eight hundred and two, there personally appeared in the court of his honor the judge of the first appointment, Juan de la Rosa, residing in the district of Arima, to whom his honor, in the presence of me the notary, administered the oath, in due form, on God our Lord, and on the sign of the Cross, and thereon, he promised to relate the truth, to the best of his knowledge, to whatever he might be interrogated; and accordingly having been questioned concerning the tenor or motive of his being summoned, and the other circumstances relative thereto, he deposed—That he knows Carlos Gonzalez, residing in this port, personally and by acquaintance, and dealings or communication with him ever since the year one thousand seven hundred and ninety-four; that he the deponent, with his companion Julian Sanabria, lodged and boarded in the house of the said Carlos, and took their trunks thither; that in consequence of him, the deponent, having contracted a debt with Carlos, for the victualling furnished by him, he absented himself from the house, and went to get work at Arima, to enable him to pay his debt, that he the deponent learnt a few days afterwards, that Carlos was making preparations to leave the island; on this information, he came back to this port, and went to the house of Carlos, and inquired of him whether it was true that he, Carlos, was on his departure, who answered in the affirmative, but did not acquaint him that he was then shipping off his moveables; and that then, he, the deponent, told him, that he was going to procure the fourteen dollars that he owed him for his board; that he might redeem his trunk, as also that of his companion that Carlos had in his possession, to which Carlos said, it was very well. That he, the deponent, not finding Don Manuel Souzano at home, who was to have given him the money, the said deponent thereupon returned to the house of Carlos at about eleven o'clock at night, where he found the door ajar, but only an Indian woman whom he had left therein, who informed him that Carlos had already departed, and had withdrawn all his moveables, as also the deponent's trunk,

which contained his linen and clothes, and some papers, inclosing five securities for fifty-five Portugal pieces due to him, the deponent, from Don Miguel de Arsa, residing in the island of Porto Rico; and he also carried away the trunk belonging to his companion; and that although the said Carlos afterwards returned to this island, he, the deponent, never sued him, not being inclined to engage in law-suits; and that he knows, from having heard it publicly spoken of, that the said Carlos is a noted thief, for he dare not be seen at Curasao Coro, or in Porto Cavallo, by reason of the swindling acts he has there committed; and this is all he knows, and that he can depose relative to the questions that have been put to him, and that the same is the truth on his aforesaid oath, which he confirms and ratifies, and in case of need will repeat it at a future time, that he is forty-three years of age. The aforesaid was then read over to him, and he deposed that the same was correctly written, that he can neither add or diminish; and he signed hereto, together with his honor the judge, which I attest.

(Signed) FARFAN.
JUAN DE LA ROSA.

Before me FRANCISCO DE CASTRO.

[Deposition of Julian Sanabria.]—

Thereupon immediately afterwards, there personally appeared in the court of his honor the judge in this cause, Julian Sanabria, residing in the district of Arancas to whom his honor, in the presence of me the notary, administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to depose the truth to the best of his knowledge, to whatever he might be interrogated; and accordingly, on his being questioned relative to the act, at the commencement of these proceedings, and the motive of his being summoned, he deposed—That it is strictly true, that he left his trunk in the possession of the said Carlos Gonzalez, who, although he returned to this island, yet he never went to demand it, in consequence of his being indebted to said Carlos, in a certain sum for board and lodging; and he considered that Carlos with the said trunk and clothes to be paid. This is all he knows, and that he can depose in reply to the questions put to him, and is the truth on his oath as aforesaid. That he is thirty-nine years of age, and the aforesaid was then read to him; and he deposed that the same was correctly written, and he did not sign hereto, as he could not write. His honor the judge signed it, which I attest.

(Signed) FARFAN.
Before me, FRANCISCO DE CASTRO.

[Deposition of *Martin Gabriel*.]—Thereupon, in continuation, there personally appeared in the court of his honor the judge, in this cause, Martin Gabriel, a native of Curacoa, to whom the said judge, in the presence of me, the notary, administered the oath in due form, on God our Lord, and on a sign of the Cross; and thereon he promised to depose the truth to whatever he might be interrogated, and accordingly, on being questioned relative to the contents of the act, at the commencement of these proceedings, and also respecting the other circumstances, he deposed—That he knew Carlos Gonzalez for a long space of time back, when he, the deponent, was at Curacoa, and he heard it currently reported at that place, that the said Carlos Gonzalez had taken up, and purchased goods of sundry merchants on credit, and that he never paid for them, absenting himself from the said city of Curacoa, without paying for them, in consequence thereof, he cannot appear there. That he, the deponent, has heard it reported, that a robbery had been committed on Pedro Ruiz, but that he does not know by whom. The foregoing is all he knows and that he can depose with respect to the questions put to him, and is the truth on his oath as aforesaid, which he confirms and ratifies, and in case of need will repeat the same at a future time: that he is thirty-nine years of age, and on the said deposition being read to him, he deposed, that the same was correctly written, that he can neither add nor diminish, and he did not sign it, saying he could not write: the said judge signed, which I attest.

(Signed) FARFAN
Before me, FRANC^o. DE CASTRO.

[Act.]—Seen—And, notwithstanding all the citations or summonses have not been accomplished in consequence of not being able to find the persons summoned, they being absent from this port, notwithstanding all the exertions used by the officer, Rafael Chando, reserving the receiving the said depositions proceed to receive the confession of Carlos Gonzalez, and there must be put to him such interrogatories, and his examination taken as may appear and be inserted in these proceedings.

(Signed) FARFAN.

His honor the ordinary judge of the first appointment of this Island of Trinidad thus decreed, and he signed the same, on the nineteenth day of January, in the year one thousand eight hundred and two.

Before me, FRANCISCO DE CASTRO.

[Certificate of Imprisonment.]—I, the undersigned notary do hereby certify, that having proceeded to the public prison, on the day of the aforesaid date, I there saw Carlos Gonzalez in a cell with one pair of irons on, and I saw Luisa Calderon in another room, likewise, with one pair of irons on; this I attest being performed, that the same may avail, in pursuance of the decree.

(Signed) FRANCISCO DE CASTRO.

[Examination of *Carlos Gonzalez*.]—In the port of Spain, in the windward Island of Trinidad, on the twenty-first day of the month of January, in the year one thousand eight hundred and two, his honour, the ordinary judge of the first appointment, ordered, that there should be brought before him in his court, a man who was then a prisoner in the public prison, to whom, in the presence of me, the notary, he administered the oath, on God our Lord, and on the sign of the Cross, and thereon having promised to relate the truth, to the best of his knowledge, to whatever he might be interrogated, to each of the questions he answered as follows: *Interrogated* respecting his name, where born and matriculated, or residing; what religion he professes, of what condition and calling in life, his age, by whose order he was imprisoned, he declared—That his name was Carlos Gonzalez, was a native of the city of Coro, that he resided in this port, and that he was of the Holy Roman Catholic religion, was a married man, and was by trade a tailor, although he carried on commercial transactions; that he is in his thirty-seventh year, that he is now a prisoner by order of the governor, and that the cause of his imprisonment was, for having spoken on the evening of the seventh of last month, being December, with Luisa Calderon, the house keeper of Pedro Ruiz, and from the latter having asserted that on that same evening he had been robbed of two thousand dollars.

Interrogated.—Where and how he, the examinant, passed his time on the said seventh, and particularly at the hour of evening prayers.—He declared, that at the hour before mentioned, he talked with Luisa Calderon, being then in the street, and opposite the house, where Pedro Ruiz sells tobacco, with whom she lives. And she conversed about cohabitation together, having once had a carnal connexion with her: that she bid him go to the door of the court or passage of the said house, and he accordingly did, and stood there, pretending to make water to loiter, at which said time, there came a negro and negress, and the latter asked

him why he made water there, and the examinant, without making any reply, went further up the passage, constantly feigning as if he was making water; and whilst being there, he heard the noise of the door of the said house, when he approached nearer thereto and met the said Luisa, who told him to go away immediately, for that Pedro Ruiz was coming; whereupon he instantly retired, until he reached the corner of the house of Don Joseph Rodriguez, opposite the house lately held or tenanted by Don Bartolome Pontel; and from thence, immediately afterwards, he went by the direct street to his own house, without stopping at any place whatever; and having reached his house, he inquired of his boys or young men after his horses; then taking a chair, he sat down at his own door, where Pedro Ruiz found him, whom the examinant received, and gave a seat to. He thus replied as aforesaid.

On being reminded, that whereas he, the examinant, has said, that he did not stop in the passage with Luisa but a trifling space of time, and that the moment that she had told him that Pedro Ruiz was coming, he went away, and did not stop any where till he reached the corner of the house of Rodriguez, and that afterwards he proceeded direct homewards; it, on the contrary, appears by this summary, that after he, the examinant, had entered the court or house passage of Pedro, he stopt there a considerable time, without coming out, during which interval was heard the noise of the said door bolt being drawn, and a short time after, the sound of blows, as of breaking open a trunk, and that after this, he had gone away, proceeding by the shore, and towards the East. He replied, that it was false that he ever stopt a considerable space of time in the passage, for the instant that Luisa told him that Pedro was coming, he withdrew in the manner as he has already described; that it is true he took his way towards the sea, going round by the building that was formerly the Custom-house, until he arrived in front of the shop or warehouse of Ruiz, in the manner as he has before acknowledged, and that he never heard any other noise than that of Luisa opening and shutting the door of the court or passage. Thus replied as aforesaid.

Interrogated—Whether he knew, previous to the robbery committed on Pedro, how much the latter had in his possession, and where kept? he replied, that he was ignorant thereof, and did not know how much money he might have, but that he is of opinion it could have been but a small sum; for, between one and two months previous to the robbery,

the said Pedro had requested a loan from him, the examinant, and, as he believes, for the purchase of some mules, and that, as he did not lend him any, he thinks and believes, that Pedro had recourse, or applied to Monsieur Geromo Bernaza, and that he is ignorant where Pedro kept his money, if in case he had any. He thus replied as aforesaid.

On being reminded that whereas he says, that he did not know where Pedro Ruiz kept his money, and how much, when at an examination face to face that was taken by the predecessor of his honor the judge in this cause, and in the presence of the notary hereof, it appears, and is proved, that the examinant, one certain evening, at about eight o'clock, went and requested Pedro to change him some money for small silver, to enable him to give change to those that came to buy meat of him, which he was in the habit of selling, as he expressed at that time; and that accordingly Pedro, in the presence of several persons that were present, opened a trunk, and taking out a large purse or bag, gave him change. He replied thereto, that at some time in last year, previous to the robbery happening, he remembers, that at about eight at night he went to the house of Pedro Ruiz, and requested change of him for three dollars in small silver, and that accordingly Pedro changed him two, saying that he had no more; and that he solicited the said change to accommodate the purchasers of meat in his butcher's shop! but that he does not remember whence it was taken. Being again reminded that whereas he says that he does not know where Pedro Ruiz kept his money, and that it appears by the proceedings and the deposition of Luisa Calderon, that he, the examinant, was the person that broke open the trunk, and that she saw him carry off the money, on the evening of the seventh day of December last, she being concealed behind the bulk-head or wainscot near the passage and the door where he had been holding conversation with her, and when she saw him, the examinant, break open the trunk and take out the sundry purses and bags that were therein; and that when he took away the money, she, Luisa, endeavoured to conceal herself more closely, that he, the examinant, might not see her: He replied, that the whole which the said Luisa had deposed with respect to the robbery, was a false accusation that she had raised against him. On which reply, his honor ordered this examination to be suspended, for the same to be resumed at any future time, as may be suitable and fitting; and the same having been read to him, he declared the same to be correct; and he

did not sign it, saying he could not write. His honor, the judge, signed it, which I attest.

(Signed) JOSEPH FRAN^{co}. FARFAN.
Before me FRAN^{co}. DE CASTRO.

[*Deposition and citation and summons of Nicolas Ybarrarte.*—In the Port of Spain, in the windward island of Trinidad, on the eleventh day of February, in the year one thousand eight hundred and two, there personally appeared in the court of his honor the judge in this cause, Nicholas Ybarrarte, a free negro, to whom the said judge in the presence of me, the notary, administered the oath in due form, and which he accepted on God our Lord, and on the sign of the Cross, and thereon he promised to depose the truth to the best of his knowledge, to whatever he might be interrogated; and there accordingly being read to him the expressions uttered by him, as deposed by Antonio Josef de Alcala, he deposed, that the said citation of his words is true, but with this difference, that he, the deponent, being slave of Don Pedro Ibarrarte when very young, and he, the deponent, being sick at La Guayra, Don Pedro went a voyage to the island of St. Thomas, and that said Don Pedro took Carlos, instead of him, as a page; that on his return he met with the deponent at Caracas, and his said master resided at the house of Suar-navar the factor, when one day, being a holiday, his master ordered him, the deponent, to fetch him a laced waistcoat for him to put on, and on his not finding it, his master said, "That thief, Carlos Gonzalez, has stole it, in the same manner as he served me in the island of St. Thomas," and that the words that he spoke to the said Antonio Joseph Alcala, did not mention the island of Curacoa, but mentioned the island of Saint Thomas; that at that time his said master discharged Carlos out of his service and house, and until he came here he had never since seen Carlos, and this is all he knows and that he can depose in reply to the questions put to him, and is the truth on his oath as aforesaid: he ratifies and confirms the same, and in case of need will repeat it at a future time; and that he is forty years of age. On his foregoing deposition being read to him, he declared the same to be correctly written; and that he can neither add nor diminish: he did not sign hereto, he deposing that he could not write. His honor, the judge signed it, which I attest.

(Signed) FARFAN.
Before me FRANCISCO DE CASTRO.

[*Examination of Carlos Gonzalez and Luisa Calderon, face to face.*—In the aforesaid place, and on the same day,

his honor the judge in this cause, ordered Carlos Gonzalez and Luisa Calderon to be brought before him, for the purpose of ascertaining the truth with regard to the crime in question; and the said Carlos and Luisa being first duly sworn on God our Lord, and on a sign of the Cross, and having promised to relate the truth to all whatever questions that might be put to them, he interrogated Carlos where the money was deposited that had been stolen from Pedro Ruiz on the seventh day of December last, about the hour of sun-set of the same day, he being on the exact spot on the same day and at the same hour, when the robbery was committed; it not appearing from this summary, that any other person whatever had entered the passage towards the room or place where the trunk of Pedro was found broke open: He answered, that he did not know any thing whatever of the said money, neither had he ever seen it, neither had it ever entered into his imagination to commit such a villainous action: Whereupon the aforesaid Luisa was reminded and admonished to relate the truth clearly and ingenuously, without prejudice to any fellow-creature, and without being influenced by her former deposition; she then confirmed, without the slightest hesitation, in every respect, her said former deposition, that Carlos was the person who had stole the money, that she had seen him from behind the bulk-head or palissade, when he the said Carlos was in the passage or entrance breaking open the trunk, and when he took away the money in the sundry bags and purses, from the place where it had been deposited, at the same time beseeching the said Carlos to confess where the money was, for that on his account her sufferings had been great, and that she was still suffering from the same cause; to all which Carlos replied, that the whole that had been uttered by Luisa was a false accusation; and he expostulated with her, appealing to her soul how she could dare or be so rash as to say, that he had committed the robbery. Under these circumstances, his honor the judge ordered this act to be suspended, which he signed, but was not signed by the aforesaid parties, they saying that they could not write, all which I attest.

(Signed) FARFAN.
Before me FRANCISCO DE CASTRO.

To his Honor the Judge of the first Appointment: The Petition of Carlos Gonzalez of this place; Showeth—

That in the most legal manner, I represent to you, and declare, that I have been one month and twelve days a prisoner in the chief prison of this port,

there having been imputed to me the commission of a robbery, which, by the information of Pedro Ruiz likewise of this place, has been perpetrated on him, of a certain sum of money which, he says, was in his house; therefore, and although the same may be apparently proved against me by evidence, but which crime I deny, by reason of my being innocent, no painful corporal punishment can be inflicted on me; and as my examination has been duly taken, and whereas my family, my affairs, and connections (in consequence of my long confinement) have suffered, and continue to suffer great loss and prejudice:

I therefore request your honour will be pleased to order me to be released from prison, and set at liberty, being ready to give and furnish the requisite prison security, by means of a person possessing the qualifications required by law; this in justice I request, and I swear the needful, &c.

(Signed) JUANA TALAVERA.
on behalf of CARLOS GONZALEZ.

[*Decree thereon.*—Annex the foregoing to the acts, that in due time it may have the effect as may be suitable.

(Signed) FARFAN.

His honor, the ordinary judge of the first appointment of this island of Trinidad thus decreed, and he signed the same on the twelfth day of February, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

[*Notification.*—Thereupon I went immediately to the house of the foregoing petitioner, and I notified to her personally the foregoing decree.

(Signed) CASTRO.

[*Inspection of the place where the robbery was committed.*—On this day, the thirteenth of the aforesaid month and year, his honor, the judge in this cause, ordered Carlos Gonzalez and Luisa Calderon to be both brought before him for the purpose of surveying and inspecting the house and place where the robbery was committed; and accordingly the said parties having been brought in custody of the officers Flores and Chando, his honor the said judge, attended by me the notary, proceeded with them to the said house; and there Carlos, as well as Luisa, pointed out the places alluded to by them in their respective depositions, where the trunk actually stood before being broke open, as also where it was found after the robbery, the place where Luisa concealed herself while she saw Carlos committing the robbery, and

a plank whose nails had been drawn of the room, and close to where the trunk had stood; and accordingly they were both admonished and reminded, that the said robbery could not have been committed without the knowledge of both of them: Luisa confirmed afresh her former deposition, and Carlos did the same; thereupon his honor came away; and at same time he ordered the officers to secure them, and to put them in the same confinement they were in before. And his honor signed hereto, which I attest.

(Signed) FARFAN.

[*Visit to the prisoners, and increase of punishment.*—On the fourteenth day of the said month and year, and at about half-past five o'clock in the morning, his honor the judge, attended by me the notary, proceeded to the public prison of this port, and being arrived there, he ordered the gaoler to open the cells in which were confined the prisoners Carlos Gonzalez and Luisa Calderon, and having found them both with one pair of irons on respectively, he admonished them, that if they did not tell the truth, their imprisonment would be rendered more irksome; and both of them having firmly repeated their former depositions, the said judge ordered an additional pair of irons to be put on each of them; and his honor signed hereto, which I attest.

(Signed) FARFAN.

Before me FRANCISCO DE CASTRO.

To His Honor, the Judge of the first Appointment: The Petition of Juana Talavera of this Port, being the lawful wife of Carlos Gonzalez, confined in the public prison; Showeth—

That in due and legal form, I represent to you, that my said husband has presented a petition in your honor's court, wherein are carried on the proceedings against him for the robbery that is laid to his charge; in which said petition he requests being released from prison, on giving or providing the competent security, which he tenders by means of a person possessing the qualifications required by law. And whereas to the present moment I am apprehensive that no decree has been pronounced thereon; I also make known to you, that my said husband, beyond these eight or ten days past, has been much indisposed, and afflicted with very serious complaints; and these, together with his confinement and want of exercise, the filthiness of the place of his confinement, and the irons on him, increase daily his said complaints. I therefore have recourse to your honor, that your honor may, through justice and humanity, be pleased to order a physician

to pay him a visit, who may certify his said bad health and actual state that he is in; and in consequence of the result thereof, to order his release, on the conditions and terms aforesaid, to the intent that he may be restored to his family, for the recovery of his health, with my care and assistance. And I also humbly represent to your honor, that the schooner being the property of my husband and myself, that is comprised in the attachment on our effects, has been actually above a month at anchor in this port, and in consequence thereof, as the same is exposed to the sun, winds, and the worms, the said schooner sustains great detriment; I therefore request that you will be pleased to permit the same to be employed, to avoid farther prejudice, and that a sum may be allowed to repair her; otherwise, I consider myself as a ruined person. By virtue hereof, I present this my petition in manner as my best avail, &c. I therefore beseech your honor to decree and order accordingly, the same being justice that I require, and I swear, &c.

(Signed) JUANA TALAVERA.

[*Decree thereon.*]—Considered the representation made by this party. The repairs of the vessel in question are to be done, the charges thereof to be defrayed by the depository, Don Miguel Pietry, and Juana Talavera must be notified to give competent security, under which the said vessel may be navigated to the coast of Naparima. Attendance on the indisposition and complaints of Carlos Gonzalez is to take place; and for that purpose Dr. Alexander Williams is hereby nominated, who on oath must depose the actual state of health of said Gonzalez; and when accomplished, the acts to be laid before me, that I may decree as may be suitable.

(Signed) FARFAN.

His honor, the ordinary judge of the first appointment, of this island of Trinidad, thus decreed; and he signed thereto on the fifteenth day of February, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

[*Notification.*]—I proceeded to the house of the petitioner; and I personally notified to her the foregoing decree which I attest.

(Signed) CASTRO.

[*Another.*]—After which I performed the like diligence to Dr. Alexander Williams, which I attest.

(Signed) CASTRO.

[*Another.*]—In like manner, I notified the same to the depository, Don Miguel Pietry, in person officially, which I attest.

(Signed) CASTRO.

[*Declaration of Dr. Williams.*]—On the sixteenth day of the aforesaid month and year, there personally appeared before the judge of this cause, Dr. Alexander Williams, who being first duly sworn, on God our Lord, and on the Sign of the Cross, he deposed, that he had visited Carlos Gonzalez, who, in his opinion, has a slight indisposition, that proceeds more from the uneasiness of his mind, by reason of his confinement in prison, than from any infirmity of body; and this is all he can depose touching his said visit in the line of his profession. The foregoing was then read to him, and he declared that the same was correctly expressed; and he signed hereto, together with his honor, which I attest.

(Signed) FARFAN.

(Signed) ALEXANDER WILLIAMS, M. D.
Before me FRANCISCO DE CASTRO.

Seen and considered: And whereas the prisoner, Luisa Calderon, now in confinement from this cause, is a minor, not being twenty-five years of age, as is expressed in the act of the twenty-third day of December, last year, pronounced by his honor my predecessor; and the aforesaid Luisa is expressed to be a minor, from her appearance, and her being a minor is also positively mentioned in the act of confirmation, dated the twenty-fourth day of said December;—She is therefore to be notified to name her guardian or advocate, to conduct her defence; with the admonition, that in default thereof, there will be one officially appointed on her behalf, and such person, so named, must be notified for his acceptance, and to make oath in the usual manner; and when done, and the proceeding approved of, the said Calderon must be brought to confirm all the acts and depositions hitherto made by her, and thereto her guardian or advocate must be present; and when the whole hereof shall be accomplished, with all possible dispatch, the acts must be laid before me for the better decision thereon. His honor, the ordinary judge of the first appointment of this island of Trinidad, thus decreed, and signed hereto, on the twentieth day of February, in the year one thousand eight hundred and two; all which I, the underwritten notary, attest.

(Signed) FARFAN.

Before me FRANCISCO DE CASTRO.

Accordingly, I notified the foregoing act to Luisa Calderon, who being made acquainted with its contents, she said that she had already applied, and requested four different persons in this port, to act as her advocates, and that they had all of them refused, which I attest.

(Signed) CASTRO.

Seen the aforesaid diligence; and in consequence thereof, Don Juan Bermudez is hereby appointed as advocate and defender of Luisa Calderon, to whom this is to be made known for his acceptance and oath; and when performed, the appointment shall be considered as approved of as per the decree.

(Signed) FARFAN.

His honor, the judge of the first appointment of this island of Trinidad, thus decreed and signed the same on the twenty-fourth day of February, in the year one thousand eight hundred and two, which I attest.

Before me FRANCISCO DE CASTRO.

Immediately afterwards, Luisa Calderon being brought into court, I notified to her the aforesaid act, which I attest.

(Signed) CASTRO.

I made the same known to Juana Tallavera, which I attest.

(Signed) CASTRO.

I cited Don Juan Bermudez, which I attest.

(Signed) CASTRO.

To his Honor, the Judge of the first Appointment: The petition of Pedro Ruiz of this place; Showeth—

That he begs leave to represent to your honor, that for the purposes interesting to him, he requests your honor will be pleased to take the depositions of Don Juan Antonio Cypriani, and of Don Antonio Teston; that they, on their oath in the usual and due form, may depose whether they knew Monsieur Placet, and whether they know, or have heard it reported, what was spoken by him at the hour of his death, relative to a robbery that had been committed on him, Ruiz, to the intent that the said depositions may be afterwards added to the mass of the proceedings that are carrying on against Carlos Gonzales.

He therefore requests, and beseeches your honor will be pleased to decree, in manner as requested; he swears that this petition has no sinister intent, also the needful. (Signed) PEDRO RUIZ.

[Decree.]—In due time.

(Signed) FARFAN.

His honor, the ordinary judge of the first appointment of this island of Trinidad, thus decreed and signed thereto, on the twenty-fourth day of February, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

Immediately afterwards, I went to the house of the aforesaid petitioner, and personally notified to him the decree aforesaid, which I attest.

(Signed) CASTRO.

[Note.]—That Don Juan Bermudes has been absent from this port, having gone to the district of La Brea, and to this day being the eighth day of March of the year aforesaid, when he has returned, during which interval this cause has been suspended, and no farther steps taken therein, in consequence thereof, which I attest. (Signed) CASTRO.

In the Port of Spain, in the island of Trinidad, on the ninth day of March, in the year one thousand eight hundred and two, I, the notary, notified the aforesaid act, to the said Don Juan Bermudes, and he accepted his charge; and made oath in the presence of his honor the judge, on God our Lord, and on the sign of the cross in due form of law, to defend his said minor in this cause, and that he would use every effort both in judicature and thereout, as might be suitable and proper; that he would pursue the advice and counsel of persons of knowledge, conscience, and experience, who may point out to him the best means to defend his minor, and if through any neglect on his side, there should result any damage or prejudice to his said minor, he shall make good the same with his person and effects, both present and future, and he thus bound himself, and became liable to be fined to the utmost rigour of the law. And accordingly he renounced all whatever laws, privileges, and rights, that otherwise might operate in his favor, and he signed hereto, which I attest (he Bermudes, being personally known to me), the witnesses hereto being Don Juan de Montes, Don Benito de Gonzales, and Don Dionicio Vuberexa, all residing herein.

(Signed) JUAN BERMUDES.

(Signed) FARFAN.

Before me FRANCISCO DE CASTRO.

Thereupon, his honor, the said judge, on perusal of the aforesaid legal diligence and proceeding, declared, that he did confer, and hereby does confer, the charge of advocate for Luisa Calderon a minor, on Don Juan Bermudes, to whom the said judge gave full power, as such advocate, to legally appear in court, and act in this cause, on the behalf of the said minor, in all that either may be incidental, or that may originate with her, with full, free, and general administration; for which purpose he interposed his judicial authority, and he signed hereto in the Port of Spain, in the island of Trinidad, on the ninth day of March, in the year one thousand eight hundred and two.

(Signed) JOSEPH FRANCISCO FARFAN.

Before me FRANCISCO DE CASTRO.

Seen and considered these acts, and

the crime that thereby appears to be alleged against Carlos Gonzalez and Luisa Calderon. And accordingly Let charge and intimation be given them thereof with copy; that they may allege in their defence whatever they may deem suitable; this cause to be received for proof within the term of twenty common days, with the clause or condition, that there will issue the publication, conclusion, and citation, for the definitive sentence; and within the said term the witnesses in the summary must confirm their respective testimonies; and such of the witnesses as are since dead, or have absented themselves, are to be made mention of; for which purpose the acts are to be delivered for the right order thereof, and also that Pedro Ruiz is to be summoned to make such declaration as to him may be fitting; and the depositions requested by him in his memorial or petition, are to be proceeded on, as are expressed in said petition, dated the twenty-fourth day of February last, with citation on the adverse side.

(Signed) FARFAN.

His honor, the ordinary judge of the first appointment of this island of Trinidad, thus pronounced and signed on the first day of April, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I notified the foregoing to Don Diego Antonio de Alcala, which I attest.

(Signed) CASTRO.

In like manner I notified it to Don Juan Bermudes, which I attest.

(Signed) CASTRO.

I cited Pedro Ruiz in due form, and that in the presence of the judge of the first appointment, which I attest.

(Signed) CASTRO.

In the Port of Spain, in the windward island of Trinidad, on the first day of April, in the year one thousand eight hundred and two, there personally appeared in the court of his honor, the judge in this cause, Don Pedro Josef Perez of this place, a witness examined in this cause; to whom, in the presence of me, the notary, his honor administered an oath in due form, on God our Lord, and on the sign of the Cross; and he thereon having promised to depose the truth, there was then read to him the deposition made by him as is inserted at fo. 14 to 16, and over-leaf; and he deposed that the whole which is there written had been declared and sworn to by him the witness, and that the same was the truth, which he confirms and ratifies; and in case of need, would now repeat it afresh in this full court, having no doubt whatever thereof. The foregoing was

then read to him, and he declared that the same was correctly written, and he signed the same, together with his honor the judge, which I attest.

(Signed) FARFAN.

(Signed) PEDRO JOSE PEREZ.

Before me FRANCISCO DE CASTRO.

On the before mentioned day, there personally appeared before his honor, the judge in this cause, Don Francisco de Salazar of this place, a witness examined in this cause; to whom, in the presence of me, the notary, his honor administered an oath in due form, on God our Lord, and on the sign of the Cross; and he thereon having promised to depose the truth, there was then read to him the deposition made by him, as is inserted at fo. 12 to 13 of the foregoing summary; and he deposed, that the whole which is there written had been declared and sworn to by him, the witness; and that the same was truth, as he had heard it publicly reported, which he confirms and ratifies; and in case of need would now repeat it afresh in this plenary court; that he can neither add nor diminish. The aforesaid was read to him, and he declared it to be correctly written, and he signed it, together with the said judge, which I attest.

(Signed) FARFAN.

(Signed) FRANCISCO SALAZAR.

Before me FRANCISCO DE CASTRO.

In continuation there personally appeared Juan de la Rosa, of the district of Arima, a witness examined in this process; and the oath being first administered to him in due form, on God our Lord, and on the sign of the cross, he thereon promised to relate the truth; there was then read to him the deposition made by him, as is inserted from over leaf of fo. 28, to over leaf of fo. 30. He deposed, that the whole which is there written, he the witness had declared on oath, the whole thereof being the truth, which he ratifies and confirms, and in case of need would now repeat it afresh in this plenary court; that he can neither add nor diminish, and the foregoing being read to him, he declared it to be the same he had deposed, and he signed it, together with the said judge, which I attest.

(Signed) FARFAN.

(Signed) JUAN DE LA ROSA.

Before me FRANCISCO DE CASTRO.

Immediately afterwards, for the purposes aforesaid, his honor the judge of this cause, gave orders for the personal appearance in his court of Cyprian Villa Nueva, a witness examined in this process; to whom his honor, by means of the interpreter, and in the presence of me the notary, administered the oath in

due form, on God our Lord, and on the sign of the Cross; and he having promised to relate the truth, there was then read to him his deposition, as is inserted at fo. 4 to fo. 5, of the summary foregoing; and he deposed, that the whole which is expressed therein, he the witness had declared on oath, and that the same is truth, which he ratifies and confirms, and in case of need would repeat it afresh in this plenary court; that he can neither add nor diminish. The aforesaid was read to him, and he said it was the same as declared by him, and he did not sign it, by reason that he could not write; it was signed by his honor the judge, and by the interpreter, which I attest.

(Signed) FARFAN.

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

In continuation, the said judge ordered personally to appear before him Theresa Alen, a free mulatta of this place, a witness that has been examined in this process; to whom, by means of the interpreter, and in the presence of me the notary, he administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon, having promised to relate the truth, there was then read to her the deposition that is inserted at fo. 1 and fo. 2 of the summary; and she declared, that the whole, as is therein written, she had deposed on oath, the same being the truth, which she ratifies and confirms, and in case of need would repeat it afresh, in this plenary court. The aforesaid was read to her, and she declared it to be the same as she had deposed; that she could neither add nor diminish either from the one or the other, and she did not sign it, as she said she could not write: the same was signed by his honor and by the interpreter, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

On the third of the aforesaid month, his honor the judge in this cause ordered personally to appear before him the negro Topen; and his honor administered to him the oath in due form, on God our Lord, and on the sign of the Cross, as having been a witness examined in this cause; he thereon deposed, that the whole which was expressed in his deposition, and which was read over to him, as is inserted at fo. 6, and over leaf, he declared and deposed that the same was truth, which he confirms and ratifies, and in case of need, he would now repeat it afresh in this plenary court, that he can neither add or diminish. The aforesaid was then read to him, and he

declared it to be correct, and he did not sign it, as he said he could not write. His honor the judge signed it, together with the interpreter, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

On the 5th of the aforesaid month and year, there personally appeared in the said court, the negro Pedro (the slave of Pedro Ruiz), he being a witness that has been examined in this cause; to whom his honor the judge, by the means of the interpreter administered the oath, in the presence of me the notary, in due form on God our Lord, and on the sign of the Cross; who thereon promised to declare the truth to whatever he might be questioned; and accordingly, as a witness examined in this cause, his deposition was read over to him, as is inserted at fo. 13, and he deposed, that the whole thereof had been declared on oath by him the witness, and that it was the truth, which he confirms and ratifies, and in case of need he would now repeat the same afresh, in this plenary court; that he can neither add nor diminish, and he did not sign it, as he said he could not write. His honor signed it, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

On the 6th day of April, in the aforesaid year, there personally appeared in the court of his honor the judge in this cause, Josef Rodriguez, a witness that has been examined in this process; to whom his honor, in the presence of me the notary, administered the oath in due form, on God our Lord, and on a sign of the Cross; and thereon having promised to relate the truth, there was then read to him the deposition made by him, as is inserted from fo. 3 to fo. 4 of the foregoing summary. He deposed, that the whole that is expressed therein had been declared on oath by him the witness; and that the same was the truth, which he ratifies and confirms, and in case of need, he would repeat it afresh in this plenary court; that he can neither add nor diminish. The aforesaid was then read to him, and he declared it was correct, and he signed it, together with his honor the judge, which I the undersigned notary attest.

(Signed)

JOSEF RODRIGUEZ.

(Signed) FARFAN.

Before me FRANCISCO DE CASTRO.

I cited Carlos Gonzalez for the examination of the witnesses, given notice

of by Pedro Ruiz, in his note of the 24th day of February last, and he did not sign it not knowing how to write; it was signed by his wife, which I attest.

(Signed) JUANA TALAVERA.
(Signed) CASTRO.

To the Judge of the first Appointment: The Petition of Juana Talavera, the lawful wife of Carlos Gonzalez; Showeth—

That I humbly appear in due form of law, and represent to you; that in the month of December last, my said husband was, by order of the Court of the Government, committed to the prison of this Port; and a few days afterwards, the whole of his and my effects were put under sequester, or attachment, in consequence of the criminal process that is prosecuted against him, at the suit of Pedro Ruiz, for a robbery that he alleges to have been committed in his house; among which effects attached was included a certain sum of money, that my said husband and myself had in gold and silver, as appears by the documents of executing the attachment and deposit that are annexed to the process; since which time, I have maintained myself, my family, and my said husband, by my personal labour, that they might not perish with hunger: and whereas I am now utterly incapacitated to continue doing it as hitherto, from my indifferent state of health, and having no resource whatever to avail myself of for the supply of our necessity, I am absolutely forced to implore the compassion of the Court, that an order may be given therefrom, for two hundred dollars to be paid me out of the money that was attached, to enable me therewith to pay some debts I have contracted to support my family, and to supply some urgent wants at the present time; which favor I hope for, from the benignity of your honor, recollecting that I am a poor woman destitute of friends. Therefore, &c.

I humbly pray that your honor will thus decree, and order the same, being justice which I require, and I swear, &c.

(Signed) JUANA TALAVERA.

Let there be given to the petitioner one hundred-and-fifty dollars out of the money deposited under her receipt, and for this once. (Signed) FARFAN.

His honor the ordinary judge of the first appointment of this island of Trinidad, thus decreed, and signed on the seventh day of April, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I thereupon immediately notified the foregoing decree to the petitioner personally, which I attest.

(Signed) CASTRO.

And afterwards I went to the house of the depositary, and having notified to him the foregoing decree, he delivered to me the one hundred-and-fifty dollars, agreeable to the decree, which I attest. (Signed) CASTRO.

I afterwards delivered to Juana Talavera the one hundred-and-fifty dollars before-mentioned, who duly acknowledged the delivery thereof to her satisfaction, and she signed hereto, which I attest. (Signed) JUANA TALAVERA.
(Signed) CASTRO.

In this Port of Spain in the island of Trinidad, on the 8th day of April, in the year one thousand eight hundred and two, there personally appeared before his honor the judge of the first appointment, the negro woman Josefa Maria, a witness examined in this cause; and in the presence of me the notary, his honor administered to her the oath in due form, on God our Lord, and on the sign of the Cross; and thereon she promised to depose the truth to the best of her knowledge, to whatever questions might be put to her; and there then being read over to her, the deposition made by her, which is inserted at fo. 5 in these acts, and she being made acquainted with the whole contents thereof; she said it agreed with her deposition, and that she can neither add nor diminish; she confirms and ratifies it, and in case of need would repeat it afresh in this plenary court; that the same is the truth on her oath as aforesaid, that her age is as before expressed in these acts, with the time since expired. She did not sign it, as she said she could not write. His honor signed it, together with the interpreter, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

In continuation, there personally appeared before his honor the judge, Honoré Virot; to whom the said judge, in the presence of me the notary, administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to depose the truth to whatever questions might be put to him; and thereupon his deposition, which is inserted in these acts at fo. 8 and over leaf, being read to him from the beginning to the end, and he being made acquainted therewith; he deposed, that the same was in every respect conformable to his testimony, which he ratifies and confirms, and in case of need, would repeat the same afresh in this plenary court; that the same is truth on his oath as aforesaid, and his

age as therein described. The aforesaid was then read to him, and he declared it to be correctly written: he did not sign it, saying he could not write. His honor signed hereto, together with the interpreter, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

On the same occasion, there again personally appeared before his honor the judge, the said Honoré Virot; and in the presence of me the notary, was administered to him the oath in due form on God our Lord, and on the sign of the Cross; and thereon he promised to depose the truth, to the best of his knowledge, to whatever questions might be put to him; and accordingly there was read to him, word for word, the deposition that was given in these proceedings by Joseph Arnaud, and which is inserted at fol. 7; and he being made acquainted therewith, he deposed, that the said Arnaud, as a good Christian and a man of good character, he, the witness, vouches for him (as said Arnaud is absent); and he believes and considers as true, the whole contents of his aforesaid deposition, and that he knows of nothing whatever to the contrary; this being all he is able to depose on his aforesaid oath, and he confirms and ratifies the same and will ever repeat it. On the aforesaid being read to him, he declared it to be correctly written; that his age is as before described in these acts: he did not sign it, saying he could not write. His honour signed hereto, together with the interpreter, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

In continuation, there appeared before the said judge, Gaspar Dias; to whom, in the presence of me, the notary, was administered the oath in due form on God our Lord, and on the sign of the Cross; and thereon he promised to declare the truth, to the best of his knowledge, to whatever questions might be put to him; and there being read to him, the deposition made by him, and inserted in these acts at fol. 10; and he being made acquainted therewith, he deposed that the same was truth, which he confirms and ratifies, and now repeats in this plenary court that it is truth on his aforesaid oath; and on its being read to him, he declared it to be correctly written, and he did not sign it, saying he could not write. His honor signed it, which I attest.

(Signed) FARFAN.

Before me FRANCISCO DE CASTRO.

In continuation, there personally appeared before his honor the judge, Nely, a negro woman; to whom, in the presence of me the notary, was administered the oath in due form, on God our Lord and on the sign of the Cross; and thereon she promised to relate the truth, to the best of her knowledge, to whatever questions that might be put to her; there was then read to her the deposition she made from the beginning to the end, and which is inserted at fol. 9 in these acts; and she being made acquainted therewith, she declared that the contents thereof were true; she confirms and ratifies the same, as she can neither add thereto nor diminish, it being truth on her aforesaid oath. The aforesaid was read to her, and she declared it to be correctly written; that she can neither add nor diminish: she did not sign hereto, as she could not write. His honor the judge signed it, together with the interpreter, which I attest.

(Signed) FARFAN.

(Signed)

CARLOS A. TELLINEAU, Interpreter.
Before me FRANCISCO DE CASTRO.

Immediately afterwards, there appeared before the said judge, Antonio Josef, a free mulatto; to whom, in the presence of me the notary, was administered an oath in due form, on God our Lord and on a sign of the Cross, and thereon he promised to relate the truth, to the best of his knowledge, to whatever questions might be put to him; and thereon his deposition being read to him, word for word, as is inserted in these acts, at fol. 11, he declared that his said deposition was strictly correct; and the said witness confirms and ratifies the same, having repeated it in this plenary court: That the aforegoing is the truth on his oath as aforesaid, and he declared it to be correct; he signed it, together with his honor, the judge, which I attest.

(Signed) FARFAN.

(Signed) ANTONIO JO. ALCALA.

Before me, FRANCISCO DE CASTRO.

On the 9th of the said month and year, there personally appeared before his honor, the judge of the first election, Julian Sanabria; to whom the said judge administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, to whatever questions might be put to him; and thereupon his deposition was read to him, as is inserted at fol. 30 over-leaf of these acts; and being made acquainted with the contents thereof, he declared, that the same was strictly conformable to what he, the witness, had deposed, and he confirms and ratifies the same.

And in case of need, he now repeats it afresh, that the same is the truth on his aforesaid oath: the foregoing was then read to him, and he declared that it was correct, that he can neither add nor diminish; he did not sign hereto, as he said he could not write. His honor the judge signed it, which I attest.

(Signed) FARFAN.

Before me FRANC^o DE CASTRO.

Immediately afterwards, there personally appeared Martin Gabriel, to whom his honor the judge, in the presence of me the notary, administered an oath in due form, on God our Lord and on the sign of the Cross; and thereon he promised to relate the truth to the best of his knowledge, to whatever questions might be put to him; and thereupon his deposition was read to him as is inserted at fol. 31 over-leaf of these acts; and he declared that the same was strictly conformable to what he had deposed, and he confirms and ratifies the same, and in case of need he repeats it afresh in this plenary court, and is the truth on his aforesaid oath: this is all he knows and that he can depose to the questions that have been put to him, and is the truth on his said oath: it was then read to him, and he declared that it was correctly written, and he did not sign hereto, as he could not write. His honor the judge signed it, which I attest.

(Signed) FARFAN.

Before me FRANC^o DE CASTRO.

On the same day, there personally appeared before his honor, the said judge in this cause, Nicholas Ybarrarte; to whom he administered the oath in due form, in the presence of me the notary, on God our Lord and on the sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, to whatever questions might be put to him; and thereupon his deposition was read to him, word for word, as is inserted at fol. 36 over-leaf, of these acts, which he confirms and ratifies, and now repeats it in this plenary court; that this is all he knows, and that he can depose on his aforesaid oath; and that the foregoing is correctly written, and that he can neither add nor diminish: he did not sign hereto, as he could not write: his honor the judge signed it, which I attest.

(Signed) FARFAN.

Before me FRANC^o DE CASTRO.

In the Port of Spain, on the 21st day of April, in year one thousand eight hundred and two, Pedro Ruiz, for the purpose of adding hereto the information of a witness, he produced as such Don Juan Antonio Cypriani, a trader, residing in this place; to whom his honor the judge,

in the presence of me, the notary, administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to depose the truth to the best of his knowledge to whatever questions might be put to him; and the said witness having been interrogated relative to the particulars of the memorial presented by the said Ruiz, and he being made acquainted therewith, he deposed, that he heard it said by Don Lorenzo Placet, that he suspected having been robbed of sundry goods by Carlos Gonzales, who lived contiguous to his warehouse; that this is the truth, and all that he can depose on the oath that has been administered to him, which he confirms and ratifies, and in case of need will repeat it at a future time; the foregoing was read to him, and he declared it was correctly written; that he can neither add nor diminish, and he signed hereto, which I attest.

(Signed) FARFAN.

(Signed) J^a ANT^o. CYPRIANI.

Before me FRANC^o DE CASTRO.

On the same day, for the same purposes, Pedro Ruiz brought forward as a witness Don Antonio Teston, of this place; to whom his honor, in the presence of me the notary, administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth to the best of his knowledge to whatever questions might be put to him; and the witness having been interrogated relative to the contents of the memorial presented by the said Ruiz, he deposed, that he does not recollect, neither can he assert, that Don Lorenzo Placet ever uttered such expressions: that is the truth on his aforesaid oath, which he confirms and ratifies, and in case of need he will repeat the same. On its being read to him, he declared it was correct; that he can neither add nor diminish; that he is more than twenty-five years of age, and he signed hereto, together with the said judge, which I attest.

(Signed) FARFAN.

(Signed) ANTONIO TESTON.

Before me FRANC^o DE CASTRO.

To his Honor the Judge of the first Election:

Don Juan Bermudez, of this place, advocate and guardian of the minor Luisa Calderon, imprisoned on suspicion of being an accomplice in the robbery, relative to which this criminal cause is prosecuted, in legal form and manner, do appear and represent to your honor, that there having been received in this cause, the proof, together with all the notices of publication, conclusion, and citation for pronouncing sentence, I allege in

manner as is fitting, and solicit, that your honour, duly referring yourself to the merits of the justification, will be pleased to acquit my said minor of and from the accusation that has been laid against her, condemning her accuser in the penalties to which he is liable by law, that the same may operate as a warning and example to others; and also in the damages, costs, delays, and prejudices incurred by the party I defend, ordering that she be immediately set at liberty, as she ought to be for the reasons that from fact and law I shall set forth and explain.

It is certain that, at fol. 17, in these acts Luisa entirely denies any knowledge of who were the parties that committed the robbery; and that her deposition was ordered to be suspended till a more fit opportunity; she was notified at folio 19 the order for torture issued and signed by his excellency; and my said minor persists in saying, not only that she did not know who had committed the robbery, but also in every respect confirms her former declaration.

This repeated denial on her part either has its origin from the fear she entertained of Carlos Gonzalez, should he come to know of her having declared the truth, or from the affection she might have for him in consequence of the illicit and secret connection there had existed between them; doubtless persuading herself, that by firmly denying it, the affair would be terminated, or order for torture would not be enforced; that no punishment whatever would be inflicted on her, and that she should, in the end, be released. But when the order for torture was put in execution, no considerations, either of love or fear, could restrain her any longer; but rendering due homage to truth, she immediately unveiled the mystery, declaring, with a readiness and more ingenuousness than ever yet seen, that Carlos was the person who had perpetrated the robbery; and she conceals no circumstance whatever of the manner he committed it; and proceeding to fo. 22 she then confirms all her preceding deposition, without the infliction of either punishment or torture; which voluntary and spontaneous confirmation was made within the 24 hours, being the natural space of one day, in which time it is required to be done, in pursuance of chap. 17 of the ecclesiastical court or code of laws with respect to tortures, and also of Elisondo in his criminal code.

His honor the judge, however, not yet satisfied, and who being desirous of knowing who were the accomplices, and to get at the truth, thought proper to inflict the torture a second time; which she endured with patience, and constant-

ly maintaining, and stedfastly repeating, her latter deposition; during the second, violent pains she suffered, enduring with heroic spirit all the torments, from her regard to truth, which was highly extraordinary in a girl of so tender an age as that of 14 years; and during her said torments, she never, in the slightest degree, deviated or equivocated in her story; thereby leaving the minds of his honour the judge, and his attendant officers, fully convinced, that on the part of my minor, she had in no way been accessory to the said robbery.

When the critical time arrived of the examination face to face, which is to be read and seen at fo. 38 and over leaf, this did away and dissipated all doubts whatever, if any such remained in the breast of the judge, relative to whether she had been accessory, as was sought to be known. Then was observed the dis-embarrassment, clearness, and steadiness, displayed by my minor in her conversation with Carlos, asserting to him, face to face, that it was him who had broke open the trunk, stole the money, and carried it off in the same bags or purses in which it had been deposited. If Carlos, at that time, had had any thing to have said to the contrary, then was the time, the opportunity, and fit occasion, to have disputed it with my minor, and have accused her of being an accessory; but nothing of this kind took place; and at this same interview Luisa made, or gave, a fresh confirmation of all she had before asserted.

When, by inadvertence, want of recollection, shame, or from any other motive that I am unable to state expressly, that Carlos had refrained and omitted accusing my minor of being an accomplice, a good opportunity was offered to him, when the spot and place were surveyed and examined, where the crime had been committed, had it been the case; but as no such guilt exists, nor any appearances thereof, said Carlos had nothing whatever to say. The interview and examination face to face of them, took place, and the close examination of the premises was effected, without any accusation having been made by Carlos against my minor, who has never ceased confirming, in every point, her said preceding deposition.

The Ecclesiastic Court has established it in its criminal code, § 17, that, when the crime, no matter how atrocious in its nature and even ascertained, and therefore there should have been such exoneration that no punishment could be inflicted, the party in this case must be acquitted fully, and finally set at liberty.

This does not militate in this cause, as is clearly demonstrated; for there is no

crime whatever, neither any appearances of guilt against the party I defend; and for the greater proof thereof, the strict justice of your honor cannot refuse her release, with so much the more reason and justice, for when on the examination of the premises where the crime was committed his honor the judge said to both of them, that both of them must have been accessaries in committing the said robbery; and directing his discourse to Luisa, he questioned her for what reason she had not given information to the officers of justice; when she replied, that *being frightened and much flurried, she did not know what to do*; a reply fraught with simplicity as well in her manner of making it, as in the tone of her voice, and the ingenuousness with which without doubt accompanied the said answer, and without doubt it could not have escaped the great penetration of the judge whether it proceeded from sincerity or artifice: and in the persuasion I am in, the said answer was ingenuous, without fraud or subterfuge, and given by an ignorant female without art and experience.

In consideration of all these circumstances; and of there being no accusation against my said minor, from her confirmation of her said deposition, and this on all the sundry occasions she had the opportunity of doing it; and of there being no proof, nor any appearances of her having been an accessory to the crime; her innocence so satisfactorily proved, her sex, her weakness, and above, all, her age of 14 years, a period devoid of experience or reflection; I conclude and hope from strict justice that you will be pleased to pronounce her acquittal, and definitively, to be freed and released: and that she has sufficiently done away and cleared herself from the suspicion, that her inconsiderate conduct gave cause for in this particular, not only by the tortures that have been inflicted on her, but also by the misery to which she has been reduced in this royal prison for about these six months past, chained or fastened in the stocks, and ironed; and pronouncing her accordingly to be released and indemnified out of the effects of whomsoever it may attach for all the delays, damages, and losses that she has incurred.

Requesting your honour will thus pronounce and order—imploring it from your justice, which I supplicate, and I swear the needful, &c.

Furthermore I declare, that, whereas I have no ocular witnesses to produce for the more ample justification of my minor, Luisa Calderon, I refer myself intirely to what has been hereinbefore mentioned and specified by herself, subsequent to the first infliction of torture;

to the examination and survey of the place where the crime was committed. In consideration thereof I conclude as before.

(Signed) JUAN BERMUDEZ.

Annex the foregoing to the acts; that, at a proper occasion, the same may have the effects as may be fitting.

(Signed) FARFAN.

His honor, the ordinary judge of the first election, thus pronounced, and he signed thereto, in the Port of Spain, on the 21st day of May, in the year one thousand eight hundred and two, which I attest.

Before me FRANC^o. DE CASTRO.

Immediately afterwards I notified the same to the party that preferred it, which I attest.

(Signed) CASTRO.

I notified the same to Don Diego Antonio de Alcala, which I attest.

(Signed) CASTRO.

The same service I practised with Pedro Ruiz, which I attest.

(Signed) CASTRO.

To his Honor the Judge of the first Election:

Don Diego Antonio de Alcala, the empowered attorney of Carlos Gonzalez, now confined in the prison of this port, in consequence of the criminal cause actually prosecuting against him, do appear in legal form, and represent to you, that the proofs or evidence in the said cause being concluded, and not having any other to produce relative to the matters in question, and it being requisite to proceed to conclusion of the said cause, I have to request that you will be pleased to order the publication of the evidence, and that delivery may be legally made of the proceedings to the parties, in order that they may allege thereto in defence, and on their own behalf. I therefore request your honor will be pleased to pronounce and order accordingly, the same being justice that I require; and I swear, &c.

(Signed) DIEGO ANTONIO DE ALCALA.

[Copy.] (Signed) FARFAN.

His honor, the judge of the first election of this windward island of Trinidad, thus pronounced; and he signed thereto, in the Port of Spain, on the 1st day of June, in the year one thousand eight hundred and two, which I attest.

Before me FRANCISCO DE CASTRO.

I notified the foregoing to the party that preferred it.

(Signed) CASTRO.

On the same day I notified the foregoing decree to Don Juan Bermudez,

who being made acquainted therewith, he declared, that he rests his defence on the memorial already made by him, and he requested me to consider the same as legal service performed, which I attest.

(Signed) JUAN BERMUDEZ.

(Signed) CASTRO.

I delivered these proceedings into court.

(Signed) CASTRO.

In consequence of the preceding legal steps, the copy thereof must be delivered to Pedro Ruiz.

(Signed) FARFAN.

His honor, the judge of the first election, thus pronounced and ordered in the Port of Spain, on the 16th day of June, in the year one thousand eight hundred and two, which I attest:

Before me FRANCISCO DE CASTRO.

On the same day I notified the foregoing act to Juana Talavera, which I attest.

(Signed) CASTRO.

And immediately I delivered the copy thereof to Pedro Ruiz, and required a receipt accordingly, which I attest.

(Signed) CASTRO.

To his Honor the Judge of the first Election:

Don Pedro Ruiz of this place, in the criminal cause that is carried on against Carlos Gonzales confined in the royal prison, in reply to the copy of the document presented by his attorney, Don Diego Antonio de Alcala, do appear and represent to your honor, that I have no further evidence to bring forward in this cause, more than what has been already produced. I therefore supplicate from the justice of your honor, that you will be pleased to pronounce sentence on this cause in its present actual state, agreeable to the merits of the proceedings. In consequence hereof, I supplicate your honor, that you may be pleased to pronounce and order as may be conformable to justice, which I require; and I swear I am not incited by any sinister motive, and the needful, &c.

(Signed) PEDRO RUIZ.

Seen the acts: with the general consent of the parties, publication is to be made of the evidence brought forward by them respectively, and regular delivery of the process must be made in order that they may allege respectively on their own behalf as may be deemed just.

(Signed) BLACK.

His honor, the ordinary judge of the second election of this island of Trinidad, being commissioned for that purpose, by reason of his honor the judge of the first election being absent, thus pronounced and signed on the 25th day of June, in

the year one thousand eight hundred and two:

Before me FRAN^{co}. DE CASTRO.

I notified the foregoing to the party that presented it whilst he was in my office, which I attest.

(Signed) CASTRO.

In like manner I notified the same to Don Juan Bermudez, which I attest.

(Signed) CASTRO.

In like manner I notified the same to Don Diego Antonio de Alcala.

(Signed) CASTRO.

On the aforesaid day, there having appeared in the hall of my office, Don Juan Bermudez, the advocate of Luisa Calderon; he declared, that he has nothing further to allege on the behalf of his client, and that he refers, in every respect, to the allegations expressed in his preceding memorial and petition, which he now repeats afresh; and he requests his honor, the said judge in this cause, that he may be pleased to acquit his said client: and he signed hereto, which I attest.

(Signed) JUAN BERMUDEZ.

(Signed) CASTRO.

Evidence on behalf of Carlos Gonzales in the Criminal Cause with Pedro Ruiz.

Interrogatories, whereon to ground the evidence to be brought forward on the behalf of Carlos Gonzales, in the criminal cause that is prosecuted against him at the suit of Pedro Ruiz.

1st *Firstly*—Whether they, the witnesses, know me by sight, dealings, and acquaintance; whether they know any thing of this cause, and whether they are any way affected by the law of exceptions against witnesses.

2d, *Item*—Whether they know that it is a fact of my having resided in this island the term of eleven years, employed in the trade of provisions and cattle, mules, cows, &c.; whether or no I have had dealings and transactions to some amount with various inhabitants and traders; and whether I have not conducted myself therein with the greatest integrity and honor, in consequence whereof I have gained their confidence.

3rd, *Item*—Whether they have heard it said, or have ever been eye-witnesses of my having been at any time engaged in drunken riots, gaming, robberies, or any other bad action; and whether, from my good behaviour, conduct, and regularity, I am not considered as a man of good character and reputation.

4th, *Item*—Whether they know of my being in possession of a handsome sufficiency wherewith to maintain my family, and if I owe any thing to any

person whatever, or whether under any obligation.

5th, *Item*—Whether they know or believe that Pedro Ruiz has been robbed of two thousand hard dollars on his own premises, by breaking open a trunk, wherein he had the same in gold at about six o'clock in the evening, in a situation so close to the Government House.

6th, *Item*—Whether they suppose that the said Ruiz, in the short interval of time that has expired since he left the huckster's and liquor shop of Don Vicente Sanda, with whom he lived as a servant, could have acquired this money; to have bought two houses, three slaves, carts, and mules; and to carry on the business of purchasing provisions, cows, and other articles of trade, that he sells either at his warehouse or elsewhere, and to maintain a wife and family.

7th, *Item*—Whether they know that, on the day immediately following the robbery that has been denounced, the said Ruiz purchased two cargoes of mules and cattle, and a few days after that he purchased another; and that said Ruiz desired Rodriguez to be silent about it, that it might not be spoken of.

8th, *Item*—Whether they know, and whether they are not certain that Pedro Ruiz has a negro slave called Pedro, who is a known thief, and that for this reason he was sold by Don Francisco Xavier to said Ruiz; and whether some time back he did not rob Don Domingo Rodriguez, out of his warehouse, which is contiguous to that of Ruiz, of a sum of money out of his desk, which his master repaid.

9th, *Item*—Whether on the seventh day of December, when the information of Pedro Ruiz was given of the robbery in question, I was or not, at the expressly mentioned hour, sitting at my own door, conversing with Don Vincente Gallardo.

10th, *Item*—Whether the house of said Pedro Ruiz is not constantly frequented by the mother of his house-keeper (Luisa) her sisters and many other persons of this description, and that whenever he went out into the street or out of town, he left his house to the care of the latter.

11th, *Item*—Whether they know that the said Ruiz had been robbed of some money, at what time, and by whom; or whether they had heard it reported by him, or by his partner Pedro Josef Perez.

12th, *Item*.—Whether they know, and for a certain fact, that the said Ruiz was a servant in a huckster's and liquor shop that belonged to Don Vicente Sanda and Don Francisco Salazar, in the street of La Marina, or along shore; and whether one morning at day-break there was not a window found forced open, and

a trunk broke open, which was found out of the house; and whether the said Ruiz did not tell his employers that he had been robbed during the night, of the money in his possession; and whether the thief was ever discovered; and whether the like circumstance happened again or not; and whether he did not, to clear himself, lay the said robbery on a negro of Sanda; and whether the latter being persuaded that the perpetrator was the said Ruiz, did or did not turn him away from his aforesaid employ; and whether or not, at different times since, the said Ruiz has not spread reports of his having had his house robbed.

13th, *Item*—For the witnesses to declare what they know and have publicly heard, and that is notorious relative to all the circumstances of this affair.

(Signed, for my husband, Carlos Gonzales),
JUANA TALAVERA.

To his Honor the Judge of the first Election:

Carlos Gonzalez, a free mulatto of this place, now a prisoner in the public prison, for the robbery (that he is accused of) of a certain sum of money, as stated by Pedro Ruiz to have been committed in the house of the said Ruiz, relative to which a criminal process is prosecuted against him at the suit of the said Ruiz, in due and legal form, do appear and represent to you, that the cause having been received for the production of evidence within the term of twenty current days with the terms of all the requisite legal steps being adopted, publication, conclusion, and citation for definitive sentence in consequence thereof, and in pursuance of the copy delivered me of the proceedings instituted, and it being, requisite for me to produce the evidence on my behalf—I now, in a solemn manner, make presentation on oath, as customary, of the interrogatories comprising the questions that in pursuance thereof are to be put in this cause. In consequence hereof I supplicate your honor that you may be pleased to admit the said presentation, and that agreeable to the tenor thereof the examinations may be taken of such witnesses who may be brought forward to be sworn in due form, and for the adverse party to be duly cited, the same being justice that I require, and I swear, &c.

1st, And further application.—That your honour may be pleased to order that the said Ruiz, without the least delay may, on his oath, declare, to the best of his memory, whether or not its being true that about three or four months previous to the robbery, he came to my house to request me to lend him two hundred hard dollars to enable him to

purchase a cargo he was in treaty for, acquainting me that he was very poor, and without money; and whether or not I lent him the money, or whether the same was lent by Don Geronimo Bernasa; and in like manner, at whose instance he was persuaded or his mind impressed to accuse me; and of whom he availed himself to get at the speech of the governor, to prefer the complaint; of what quality was the money that he was robbed of, whence, in what place, and whether he ever mentioned to any one who was the thief; and whether he knows that his negro has the stain of being a thief; and whether he has not detected him in sundry different robberies.

2nd ditto, Another.—In consequence of its having been a long space of time that I have been a prisoner in this cell, loaded with irons that has much impaired my health, I request from your beniginity that, with reference to the former request made by me, that your honour will be pleased to set me at liberty, being ready to furnish such security or bail as before tendered with such further security as may be judged requisite—*Ut retro*.

(For my husband Carlos Gonzalez),

JUANA TALAVERA.

Generally, the foregoing document is admitted as presented and as expressed; the witnesses are to come forward as solicited; with regard to the first application, it is granted as requested; and with regard to the other, Pedro Ruiz must be made acquainted with its contents, that he may, within the usual term, allege in manner as he may think proper, with the monition that, should said period expire without its being done, such sentence will be pronounced as may be suitable. (Signed) FARFAN.

His honour, the ordinary judge of this island of Trinidad, thus pronounced and signed thereto, on the 6th day of April, in the year one thousand eight hundred and two.

Before me FRAN^{co} DE CASTRO.

Immediately afterwards I notified the foregoing act to Juana Talavera, by means or via of her attorney, Don Diego Antonio de Alcala, which I attest.

(Signed) CASTRO.

In the Port of Spain, in the windward island of Trinidad on the sixth day of April, in the year one thousand eight hundred and two, there personally appeared, in the court of his honor the judge in this cause, Pedro Ruiz; to whom the said judge, in the presence of me the notary, administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to

relate the truth to the best of his knowledge, to whatever questions might be put to him. And he having been interrogated concerning the items expressed in the first application in the memorial foregoing of Carlos Gonzales; he deposed that he did not remember that Carlos ever lent him money; he says that he does remember that for two or three days Carlos did lend him, but that he, the deponent, returned it to him, but the amount he cannot remember, whether it was two hundred or three hundred dollars, and although Carlos did not limit them to be returned so quickly; he does not remember whether it was three or four months previous to the robbery in question; and that it is truth that the said loan was to purchase a cargo, but he cannot remember whether it was of mules or of horses; and, as to his having said that he was very poor and without money, he does not remember ever having mentioned that he was either poor or rich; and that the deponent has also lent money to the said Carlos; that it is also true that Don Geronimo Bernaza had lent him money, but that he does not remember the amount: that, in consequence of what sundry witnesses had told him, and of their having declared that they had seen Carlos go first into the house where the money was deposited, and had entered, by the passage, into the said house; he, the deponent, then gave information to his excellency, the governor, in company with Don Francisco Tebles; this he did about five or six days after the robbery, and, on the day subsequent to this, the house of Carlos was searched by the judge, Don Hilario de Begorrat, and by the notary now present, with the officers of justice, Flores and Chando: that the money which he, the deponent, was robbed of was in doubloons, Portugal pieces, hard dollars, pisteens, rials, and half rials; and that the part thereof that was in silver amounted to about from five hundred to six hundred hard dollars, a little more or less, of these different descriptions of silver money; that his said money was deposited in a trunk in his house, in the second room within doors: that it is true that he had said that the person who had got his money was Carlos Gonzales, from his suspicions, in consequence of what his witnesses had informed him: that he knows that his negro is a thief, but how many negroes are there that are otherwise? notwithstanding which, he cannot attribute this robbery to him; for on that day his said negro was absent at the city of St. Josef, with the meat that he had sent him with, and on the day of the robbery, he returned from the said city at half past seven o'clock at night,

the said robbery having been committed previous to that time: that he, the deponent, has not detected his negro in any robbery, but only about a month and a half ago, a little more or less; the negroes of Domingo Rodriguez detected him in the act of opening the book-case, or desk, of said Rodriguez; and that he had a doubloon in his hand, but that he did not rob him; and he was then released, and thereupon immediately afterwards, on his speaking to the said Rodriguez, the latter told him that he *miss'd* no money whatever, although he had been so forgetful as to leave the keys of his book-case, or desk; and that this is all he knows, and that he can depose, in answer to the questions put to him, and is the truth on his aforesaid oath, which he confirms and ratifies, and in case of need, will repeat it afresh, and that he is thirty years of age. The foregoing was then read to him, and he, the deponent, declared it was correctly written; that he can neither add nor diminish, and he signed hereto, together with his honour the judge, which I attest.

(Signed) PEDRO RUIZ.

(Signed) FARFAN.

Before me FRAN^{co} DE CASTRO.

I notified the foregoing act, and duly cited Pedro Ruiz, in pursuance of the decision therein expressed, this day being the *seventh* of the aforesaid month and year; and I intimated to him the monition in due form, and he signed hereto, together with me, which I attest:—in this state of the cause he did not want to be present at the swearing or examination of the witnesses, which I attest.

(Signed) PEDRO RUIZ.

(Signed) CASTRO.

And in like manner I notified and cited Don Juan Bermudez, the advocate for the defence of Luisa Calderon, which I attest. (Signed) CASTRO.

In the Port of Spain, in the windward island of Trinidad, on the *seventh day of April*, in the year one thousand eight hundred and two, Juana Talavera, the lawful wife of Carlos Gonzalez, produced Don Lucas Macely, a trader of this place, as a witness; to whom his honor, the ordinary judge of the first election, by the means of an interpreter, administered the oath in due form, in my presence, on God our Lord, and on a Sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, in reply to whatever questions might be put to him; and he having been questioned relative to each and every one of the interrogatories, he replied as follows:

To the 1st. He deposed, that he knows Carlos Gonzalez, by dealings, personally,

and acquaintance; that he has heard of this cause, and that he is no way affected by the law of exceptions against witnesses; which said law was duly explained to him.

To the 2nd. He deposed, that it is about six years ago, when he, the deponent, became acquainted with Carlos Gonzalez, residing in this island, by sight, dealings, and conversation; and that, by reason of his having had many dealings, and done business with him to a considerable amount, as well in cattle as in mules, the said Carlos therein acquired his esteem; having conducted himself, towards him, the deponent, as well as to other individuals, with the greatest punctuality.

To the 3rd. He deposed, that the contents thereof, are well known to him; the same being publicly known; and never having heard any person whatever speak ill of the said Carlos.

To the 4th. He deposed, that the whole contents thereof are well known to him; it being notorious that said Carlos possessed sufficient to maintain himself and his family, and that he never heard it reported, that he, Carlos, was indebted to any one.

To the 5th. He deposed, that he cannot speak to a certainty, whether Pedro Ruiz had or had not the money which said Ruiz says he has been robbed of, as he is not acquainted with his circumstances; but that he has remarked, that the said Ruiz, notwithstanding the said robbery, has continued to transact his business in a manner as if no such misfortune had happened to him.

To the 6th. He deposed, that he knows, from having heard it publicly reported, that Pedro Ruiz was in the employ of Don Vincente Sanda. as his servant, in a huckster's shop; and that he went to render an account of the concerns of the said huckster's shop; the said Ruiz made it out, or pretended that he had been robbed.

To the 7th. He deposed, that subsequent to the robbery of Ruiz, the said Ruiz had purchased sundry cargoes, as well of mules as of beasts or cattle, as he has heard it publicly reported.

To the 8th. He deposed, that he being ignorant thereof, could not reply thereto.

To the 9th. He deposed in the like manner as to the 8th.

To the 10th. He deposed, that he well knows the contents thereof to be true, having been an eye-witness thereof.

To the 11th. He deposed, that he, being ignorant thereof, could not reply thereto.

To the 12th. He refers himself to what he has already deposed.

To the 13th. He deposed, that he only

knows what he has already deposed, and what he has heard publicly and generally spoken of and reported; and that the foregoing is all that he can depose with regard and in reply to the questions put to him; and is the truth on his aforesaid oath, which he confirms and ratifies, and in case of need will repeat it afresh: that he is forty years of age. The foregoing was then read to him, and he declared that it was correctly written; that he can neither add nor diminish; and he signed hereto; together with his honor the said judge, and the interpreter; which I attest.

(Signed) LUI. MAZELY.

(Signed) FARFAN.

(Signed) CARLOS A. TELLINEAU,
Interpreter.

Before me FRANC^o. DE CASTRO.

[Deposition of Juan Domingo Antonio.]

—In the Port of Spain, in the windward island of Trinidad, on the seventh day of April, in the year one thousand eight hundred and two: Juana Talavera, the lawful wife of Carlos Gonzalez, produced Juan Domingo Antonio as a witness; to whom his honor, the said judge of the first election, administered the oath in due form, on God our Lord, and on a sign of the Cross; and thereon the said witness promised to depose the truth, to the best of his knowledge, in reply to whatever questions that might be put to him; and thereupon there being read to him the contents of the foregoing interrogatories, to each of the items comprised therein he answered as follows:

To the 1st. He deposed, that he knows Carlos Gonzalez by dealings, personally, and by acquaintance with him, that he has heard of this cause, and that he is in no way affected by the law of exceptions against witnesses, which said law was duly explained to him.

To the 2nd. He deposed, that it is now twenty years that he has known Carlos Gonzalez by sight, dealings, and acquaintance with him, as well on this island as at Curacoa, and on the Terra Firma, or continent of America, and that he never heard of his having behaved wrong, but on the contrary that he acquired the esteem of every one.

To the 3rd. He deposed, that he knows the contents thereof, it being publicly known and from the long intimacy that has subsisted between them; that he never heard any person whatever speak against Carlos.

To the 4th. He deposed that the whole contents thereof are well known to him, having been an eye-witness of the management of his concerns, and that he does not know that Carlos is indebted to any one.

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To the 5th. He deposed, that he knows, from having been an eye-witness thereof, that Pedro Ruiz carries on trade by selling salt and tobacco; but that he does not know whether said Ruiz had the money or not which he says he has been robbed of.

To the 6th. He deposed, that he being ignorant thereof, he could not reply thereto.

To the 7th. He deposed in the same manner as to the 6th.

To the 8th. He deposed, that although he knows the negro in question, he does not know any thing relative to him, as therein mentioned.

To the 9th. He deposed, that he was ignorant thereof.

To the 10th. He deposed, that he knows the contents to be true, having been an eye-witness thereof.

To the 11th. He deposed, that he was ignorant thereof.

To the 12th. He deposed, that he was also ignorant thereof.

To the 13th. He deposed, that he only knows what he has already deposed, and what he has heard publicly and generally spoken of and reported; and that the foregoing is all that he can depose with regard and in reply to the questions put to him, and is the truth, on his aforesaid oath, which he confirms and ratifies; and in case of need will repeat it afresh: that he is forty-three years of age. The foregoing was then read to him; and he declared that the same was correctly written; that he can neither add nor diminish: and he did not sign hereto, as he could not write. His honour, the judge, signed it which I attest.

(Signed) FARFAN.

Before me FRANC^o. DE CASTRO.

[Deposition of Don Joseph Barthelier.]

—In continuation, the party interested presented as a witness, Don Josef Barthelier, a merchant or trader, residing in this place, to whom his honor the judge in this cause, by means of an interpreter, administered the oath, in due form, on God our Lord, and on a sign of the Cross; and thereon he promised to depose the truth, to the best of his knowledge, in reply to whatever questions might be put to him; and thereupon, there being read to him the contents of the foregoing interrogatories, to each of the items comprised therein, he answered as follows:

To the 1st. He deposed, that he knows Carlos Gonzalez by sight, dealings, and acquaintance with him; that he has heard of this cause, and that he is no way affected by the law of exceptions against witnesses, which said law was duly explained to him.

To the 2nd. He deposed, that it is about six years that he, the deponent, has known said Carlos by sight, dealings, and acquaintance; and this from having had a variety of dealings and concerns, to some considerable amount, with him, as well in horned cattle as also in mules; in which the said Carlos has justly acquired his esteem, he having conducted himself towards him, the deponent, as well as towards other individuals in this port, with the greatest integrity.

To the 3rd. He deposed, that the contents thereof are known to him, and that he never heard any person whatever speak ill of Carlos's character.

To the 4th. He deposed, that in like manner he knows the contents thereof to be true; it being publicly known that said Carlos possessed a competence to maintain his family with decency; that he has never heard it said, neither does he know that Carlos was indebted to any one.

To the 5th. He deposed, that he has heard the robbery publicly spoken of that was committed on Pedro Ruiz, but that he does not know any thing relative to the other circumstances of this item.

To the 6th, 7th, 8th, 9th, and 10th. He deposed, that he knew nothing thereof.

To the 11th. He refers to what he has already deposed to the 5th item.

To the 12th. He deposed, that he was ignorant thereof.

To the 13th. He deposed, that he only knows what he has already deposed, and what he has heard publicly and generally spoken of and reported; and that the foregoing is all that he can depose with regard and in reply to the questions put to him; and is the truth on his aforesaid oath, which he confirms and ratifies, and in case of need will repeat it afresh: that he is thirty-eight years of age. The foregoing was then read to him, and he declared that it was correctly written; that he can neither add nor diminish; and he signed hereto, together with his honor the said judge, and the interpreter, which I attest.

(Signed) BARTHELIER.

(Signed) FARFAN.

(Signed) CARLOS A. TELLINEAU.
Interpreter.

Before me FRAN^{co}. DE CASTRO.

[Deposition of *Rafael Matos*.]—On the aforesaid day, for the purposes herein-before mentioned, Rafael Matos, of this place, was produced as a witness; to whom his honor, the judge in this cause, administered the oath, in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, in reply to the questions that might be

put to him; and thereupon being questioned concerning the contents of the foregoing interrogatory, to each of the said questions he answered as follows:

To the 1st. He deposed, That he knows Carlos Gonzalez by sight, dealings, and acquaintance; that he has heard of this cause, and that he is no way affected by the law of exceptions against witnesses, which said law was duly explained to him.

To the 2nd. He deposed, that it is now eleven years that he, the deponent, has known Carlos Gonzalez by sight, dealings, and acquaintance in this island, and knew him constantly trading in provisions and cattle; and that he always heard it said, that Carlos was a man of good reputation, without interfering or embroiling himself with others, in consequence of which he has acquired the esteem of every one.

To the 3rd. He deposed, That the contents thereof is true, the same being publicly known, and that he has never heard any thing to the contrary.

To the 4th. He deposed, that he knows the contents thereof from public report to be true, that Carlos was possessed of a sufficiency to maintain himself decently; but does not know whether he was indebted to any one or not.

To the 5th. He deposed, that he was ignorant of the contents of this item, not having any knowledge whatever of his, Ruiz's, business, or concerns; but that he knew him to be a disagreeable man.

To the 6th. He deposed, that he was ignorant thereof.

To the 7th. He deposed, that he knew the contents thereof from public report.

To the 8th. He deposed, that he knew the contents thereof from the same cause.

To the 9th. He deposed, that he was ignorant thereof.

To the 10th. He deposed, that the whole contents thereof were truth, he the deponent having been an eye-witness thereof several times.

To the 11th. He deposed, that he knows of Pedro Ruiz having been robbed of a sum of money, from his having heard the said Ruiz speak of it on the day following.

To the 12th. He deposed, that he knows the contents thereof from public report a number of times, and having seen him serving in the shop of Don Vicente Sanda.

To the 13th. He deposed, that he knew the said Carlos in Coro, Curacao, and on this island, as a punctual man in business at all these places, and likewise knows his family, who were all of them much esteemed by the whites at Coro, and that they were brought up in the house of Don Colina: that what he has

now deposed, he only knows from public report, and hear-say. And this is all that he can depose with respect to the questions put to him, and is the truth on his aforesaid oath, which he confirms and ratifies, and in case of need will repeat it at a future time; that he is fifty-two years of age. The foregoing was then read to him, and he declared that the same was correctly written; that he can neither add nor diminish; he did not sign it, as he could not write. His honour the judge signed it, which I attest. (Signed) FARFAN.

Before me FRANCISCO DE CASTRO.

[Deposition of *Juan Santiago Jacome*.]
—On the aforesaid date, and for the same purposes, Juana Talavera, the wife of Carlos Gonzalez brought forward as a witness, *Juan Santiago Jacome* of this place, to whom his honor the said judge administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth to the best of his knowledge, to whatever questions might be put to him; and he the witness having been interrogated relative to the interrogatories before mentioned, to each of them respectively, he answered as follows:

To the 1st. He deposed, that he knows Carlos Gonzalez by sight, dealings, and by acquaintance with him, and has known him for more than twenty years, as well at Curacoa as at Coro, and lastly in this island; that he knows of this cause, and that he the witness is in no way affected by the law of exceptions, which said law was duly explained to him.

To the 2nd. He deposed, that he knows the whole contents thereof to be true, for the reasons already mentioned.

To the 3rd. He deposed, that he knows Carlos Gonzalez to be a man of good conduct, without the vices of drinking, riots, and gaming, and that he is a man of sober life and conversation, constantly attending to his family, and retiring to his home at early hours; and that it never came to his knowledge, that said Carlos ever was accused of the heinous crime of robbery.

To the 4th. He deposed, that he knows, from having been an eye witness of his management and trade, that he was in possession of a capital very sufficient to maintain himself and his family; and that he does not know of his being indebted to any one.

To the 5th. He deposed, that he had heard it publicly reported, that Pedro Ruiz has been robbed, but that he does not know whether he was or not.

To the 6th. He deposed, that he is of opinion, that said Carlos was in far better

circumstances than Pedro Ruiz, who but so very lately was in the low station of a shopman.

To the 7th. He deposed, that he is ignorant of the contents thereof.

To the 8th. He deposed, that he knows the negro in question to be a reputed thief, and that in like manner, for the same reason, he knows of the robbery of Don Domingos Rodriguez.

To the 9th. He deposed, that he is ignorant of the contents thereof.

To the 10th. He deposed, that he knows the contents thereof to be true, from having been an eye-witness of the same.

To the 11th. He deposed, that he is ignorant of the contents thereof.

To the 12th. He deposed, that he had heard it reported, that Pedro Ruiz has been a servant of Sanda, some short time ago; and that with respect to the remainder of this interrogatory, he knows nothing thereof.

To the 13th. He deposed, that the whole he has hereto declared he knows from the motives as are herein before mentioned, and is all he knows and that he can depose in reply to the questions that have been put to him; and that the same is truth on his aforesaid oath, which he confirms and ratifies, and in case of need will repeat it afresh; that he is fifty-six years old. The foregoing was then read to him, which he declared to be correctly written; that he can neither add nor diminish, and he signed hereto, together with his honor the judge, which I attest.

(Signed) FARFAN.

(Signed) JUAN SANTIAGO JACOME.

Before me FRAN^{co}. DE CASTRO.

[Deposition of *Bartolome Garcia*.]
—In continuation, for the aforesaid purposes, in like manner was brought forward as a witness Bartolome Garcia of this place, to whom his honor the said judge, in the presence of me the notary, administered the oath in due form on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth to the best of his knowledge, to whatever questions might be put to him; and accordingly, he the witness having been questioned relative to the contents of the foregoing interrogatory, he replied to each of them in manner as follows:

To the 1st. He deposed, that he knows Carlos Gonzalez by sight, dealings, and acquaintance; that he knows of this cause, and that he the witness is in no way affected by the law of exceptions, which said law was duly explained to him.

To the 2nd. He deposed, that he knows

the whole contents thereof to be true, from his having been an eye-witness, and from the same being publicly known.

To the 3rd. He deposed, that the contents thereof is true, from his having been an eye-witness thereof, and from the same being publicly known.

To the 4th. He deposed, that in consequence of the management of Carlos Gonzalez, and the trade carried on by him, he possesses very sufficient property to maintain himself and his family; and that it never came to his knowledge of his being embarrassed, or indebted to any one.

To the 5th. He deposed, that he is ignorant relative to the contents thereof.

To the 6th. He deposed, that he is ignorant of the contents thereof, never having had any dealings or acquaintance with the said Ruiz.

To the 7th. He deposed, that he knows well the contents thereof, from having heard it publicly reported.

To the 8th. He deposed, that he is ignorant of the contents thereof.

To the 9th. He deposed, that he is ignorant of the contents thereof.

To the 10th. He deposed, that he knows the same from having seen the family in manner as described.

To the 11th. He deposed, that he knows the same from public report, but that he is ignorant who has committed the robbery.

To the 12th. He deposed, that he well knows and remembers, that Pedro Ruiz gave it out that he was robbed, when employed as a shopman to Don Vicente Sanda and Don Francisco Salazar; and that one morning he saw the trunk of the said Ruiz on the beach, broke open, Ruiz at same time saying, that he had been robbed, and some few days after, he learnt that Ruiz was discharged from his said employ.

To the 13th. He deposed, that the whole he has hereto declared he knows from the motives as are herein before-mentioned, and is all he knows and that he can depose in reply to the questions that have been put to him; and that the same is truth on his aforesaid oath, which he confirms and ratifies, and in case of need will repeat it afresh; that he is forty-four years of age. The foregoing was then read to him, which he declared to be correctly written; that he can neither add nor diminish, and he did not sign hereto, as he said he could not write. His honor the said judge signed hereto, which I attest.

(Signed) FARFAN.

Before me FRAN^{co}. DE CASTRO.

[Deposition of Don Geronimo Bernasas.]—In the Port of Spain, in the

windward island of Trinidad, on the 12th day of the month of April, in the year one thousand eight hundred and two, on the behalf of the aforesaid interested party was produced as a witness Don Geronimo Bernasas of this place, to whom his honor the said judge, in the presence of me the notary, administered the oath in due form on God our Lord, and on a sign of the Cross; and thereon he promised to relate the truth to the best of his knowledge, to whatever questions might be put to him; and accordingly, he the witness having been questioned, relative to the contents of the foregoing interrogatories, he replied to each of them in manner as follows:

To the 1st. He deposed, that he knows the said Carlos Gonzalez by sight, dealings, and by acquaintance for about these twelve years past; that he has resided on this island; that he knows of this cause, and that he the witness is in no way affected by the law of exceptions, which said law was duly explained to him.

To the 2nd. He deposed, that he knows the whole contents thereof to be true, from being his next-door neighbour, having been an eye-witness thereof, and the same being publicly known and notorious.

To the 3rd. He deposed, that from the motives herein before mentioned, he well knows the contents thereof to be true, having always known said Carlos Gonzalez to be attentive to his family, constantly conducting himself with strict honor at home, for the chief part of the year with his said family, and never knew him to have been engaged in drunken riots, gaming, or any other vices; and by the same reasons he never heard of Carlos having been guilty of any bad action, and that thereby he had acquired the esteem of all his neighbours and others.

To the 4th. He deposed, that he knows the contents thereof to be true, and that said Carlos possessed sufficient property to maintain himself and his family with respectability, and that he does not know of his being indebted to any one.

To the 5th. He deposed, that it is his opinion, and he believes that Pedro Ruiz has never been robbed of the money as stated by him, he Pedro being addicted to the vice, by general report, of saying frequently that he had been robbed.

To the 6th. He deposed, that he refers himself to the reply foregoing.

To the 7th. He deposed, that he knows the contents thereof to be true, from having seen the beasts purchased by Pedro Ruiz subsequent to the robbery, which is all that he can say further to this question.

To the 8th. He deposed, that he knows

it to be true, that the negro slave of Pedro Ruiz, named Pedro, was sold by Don Francisco Chollier, in consequence of his being a thief; said information having been imparted to him by the seller himself, as being his motive for getting rid of him; and that subsequent to the robbery in question, the said negro has stole a sum of money from Don Domingo Rodriguez, as he has heard it publicly reported.

To the 9th. He deposed, that he knows the contents thereof to be true, from having been an eye-witness of said Carlos sitting at his own door, in conversation with Don Vicente Gallardo.

To the 10th. He deposed, that he knows the contents thereof to be true, from having been an eye-witness thereof.

To the 11th. He deposed, that he is ignorant with regard thereto.

To the 12th. He deposed, that he knows it to be true, he the deponent having seen Pedro Ruiz serving as a shopman, in the Huckster's shop of Don Vicente Sanda and Don Francisco Salazar; that he has heard it publicly reported, that said Ruiz, on sundry occasions, had given out of his having been robbed; and lastly, that said Ruiz had left said shop, in consequence of being discharged by Sanda.

To the 13th. He deposed, that the whole he has hereto declared he knows from the motives as are hereinbefore mentioned, and is all he knows and that he can depose in reply to the questions that have been put to him; and that the same is truth on his aforesaid oath. The foregoing was then read to him, and he declared it to be correctly written; that he can neither add nor diminish; that he is fifty-eight years of age. And he signed hereto, together with his honor the said judge, which I attest.

(Signed) FARFAN.

(Signed) GERONIMO BERNAZAS.

Before me FRANC^o. DE CASTRO.

[Deposition of *Francisco Antonio*.]—

On the *twenty-first day of the aforesaid month and year*, on the behalf of the party concerned, was produced as a witness *Francisco Antonio*, a free mulatto from Curacoa, residing in this place; to whom his honor the said judge, in the presence of me the notary, administered the oath in due form on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth to whatever questions might be put to him; and accordingly, he the witness having been questioned relative to the contents of the foregoing interrogatories, he replied to each of them in manner as follows:

To the 1st. He deposed, that he knows

Carlos Gonzalez, and has known him ever since he came to this island, being about eleven years ago; that he knows of this cause, and that he the witness is in no way affected by the law of exceptions, which said law was duly explained to him.

To the 2nd. He deposed, that he knows it to be true, that the said Carlos Gonzalez, on whose behalf he appears, has carried on trade in this island in such a creditable manner, that has acquired him the esteem and confidence of many merchants and inhabitants hereof, which he has heard publicly reported, and has been an eye-witness thereof.

To the 3rd. He deposed, that he knows the contents thereof to be true, the same being notorious, and that he knew Carlos Gonzales personally in Coro; also his mother and sisters, who were much esteemed and their acquaintance sought after by all the persons of note, for their good conduct and virtuous behaviour.

To the 4th. He deposed, that he knows it to be true, from having been an eye-witness, that Carlos was possessed of sufficient property to maintain himself and his family, and that he does not know of his being indebted to any one.

To the 5th. He deposed, that he knows, from public report, of Pedro Ruiz having been robbed, but he does not know by whom, nor of what sum, not being acquainted with his circumstances.

To the 6th. He deposed, that he was ignorant of the contents thereof.

To the 7th, 8th, and 9th. He deposed in the same manner as to the 6th item.

To the 10th. He deposed, that he well knows it to be true, from having been an eye-witness, that the house of Pedro Ruiz was frequented and kept, during his absence from home, by the mulattas, his housekeeper, her mother, sister, and other persons of the same stamp.

To the 11th. He deposed, that he is ignorant of the contents thereof.

To the 12th. He deposed, that he knows it to be true, that Pedro Ruiz served as a shopman in the huckster's shop of Don Vicente Sanda and Don Francisco Salazar, in the street by the water side (de la Marina); that he heard, one morning, that Pedro Ruiz said that he had been robbed, and that his trunk was found on the beach; and that some one had taken away his money, but had left in the said trunk all his wearing apparel and linen, and that the thief never was discovered, and that afterwards he had left his said employ.

To the 13th. He deposed, that the whole he has hereto declared is the truth, and that he knows the same from the reasons hereinbefore mentioned, and is all that he can depose to be true on his

aforesaid oath, which he ratifies and confirms, and in case of need will repeat the same afresh; that he is forty-five years of age. The aforesaid was then read to him, and he declared it to be correctly written; that he can neither add nor diminish, and he did not sign hereto, as he could not write. His honor the judge signed it, which I attest.

(Signed) FARFAN.

Before me FRAN^{co}. DE CASTRO.

In the Port of Spain, in the windward island of Trinidad, on the 8th day of April, in the year one thousand eight hundred and two: Carlos Gonzalez, now confined in the public prison of this place, jointly with his lawful wife, Juana Talavera, declared, that they hereby grant power, as full, ample, and complete, as legally requisite and needful, to avail to Don *Diego Antonio de Alcala*, of this same Port, specially and particularly, that he may on their behalf, and representing their persons, defend the aforesaid Carlos, in the criminal cause that is prosecuting against him, at the suit and from the accusation of Pedro Ruiz likewise an inhabitant hereof, in consequence of the charge made by him of having been robbed by said Carlos, of two thousand hard dollars, as appears by the proceedings in this matter; and for the aforesaid purpose, he, the said Don Antonio, is hereby empowered to appear on his behalf, in the court of his honor the ordinary judge of the first election, wherein the said cause is pending; and to prefer and present petitions, and such allegations as may be suitable in his defence as aforesaid; to present memorials, bring forward witnesses and evidence, to scrutinize and to controvert those of the adverse party; to make oath on all occasions, without sinister or malicious intent; to disallow and object to judges, lawyers, and notaries; to explain and declare the motives for such objections, and, in case of need, to substantiate the same on oath, and to relinquish them at pleasure; to require attachments and sequesters of effects, arrests, and consents to releases therefrom; and finally to attend to and hear acts and sentences, both interlocutory and definitive; to allow such as may be favourable to the cause, and object to such as may be prejudicial; to appeal or petition, and to prosecute said appeals and petitions, as far and wheresoever the law will admit, until he shall obtain from the superior courts a definitive sentence; and to act in behalf of the parties to these presents in every manner as they might act themselves, and be capable of, were they themselves present; these presents being hereby granted, with full, free, and general administra-

tion and for the validity of all whatever that by virtue of this power of attorney, he may transact, they bind both effects, both actually in their possession, or that may be at a future time, with clause of guarantee; and they the parties hereto, renounce all the laws, privileges, and immunities, that might operate in their favour, including the law of exceptions in due form. They thus have empowered, and have executed and signed; the one that could write signed on her own behalf, and on the behalf of her said husband, whom I attest, having a personal knowledge of; the witnesses hereto were Don Lucas Macely and Don Dionisio de Urbanexa, who were both present, and are persons residing herein.—(Signed) for me and for my husband, JUANA TALAVERA—in the presence of me—FRANCISCO DE CASTRO, notary public. This agrees with the original, date as aforesaid.

In testimony of the truth,

FRANCISCO DE CASTRO,
Royal Notary Public to the
Government.

To his Honor the Judge of the first Election:

Don *Diego de Alcala*, of this place, attorney of Carlos Gonzales (confined in the prison of this Port), in the criminal cause that has been instituted against him, in consequence of the robbery that he has been accused of, and has been imputed to have been committed on Pedro Ruiz, do in due form appear, and represent to you, that having been served with the process for the production of evidence within the term of twenty current days on this behalf, after the said term had commenced, there intervened the Easter holidays, in consequence whereof, the court was shut and the prefixed term expired: and whereas it is indispensably necessary to continue the proceedings until conclusion, with the intent that no prejudice may result to the party I defend, I request that your honor will be pleased to extend the said term for twenty days further, to enable me to produce the evidence already subpoenaed or cited; and I this day promise to renounce such part of the said term as may be superfluous. I therefore supplicate that your honor may be pleased to pronounce and decree accordingly, the same being justice that I request, and I swear, &c. Furthermore, I herewith, in the most solemn manner, present the copy of the power of attorney conferred on me by the said Gonzalez; and by the same is manifested the authority I am invested with, and the justice, &c. *ut retro*.

(Signed) DIEGO ANTONIO DE ALCALA.

To the chief point petitioned: The term shall be extended twelve current days longer, with positive denial of any further extension. To the latter point expressed in the said petition, the said power of attorney is hereby admitted, and which in due course must be annexed to the proceedings in this cause.

(Signed) BLACK.

It was thus ordered and decreed by the ordinary judge of the second election, who signed the same in the Port of Spain, on the *seventh day of May*, in the year one thousand eight hundred and two, which I attest, and also that it was thus transacted in the absence and by commission of his honor the judge of the first election.

Before me, FRANC^o DE CASTRO.

On the same day, I notified the contents of the said decree to the petitioner, which I attest.

(Signed) CASTRO.

On the same day, I notified the same to the guardian of Luisa Calderon, which I attest.

(Signed) CASTRO.

I notified the same, and duly cited Pedro Ruiz, which I attest.

CASTRO.

To His Honor, the Judge of the first Election:

Diego Antonio de Alcala, the attorney of Carlos Gonzalez, in the criminal cause now prosecuting against him at the suit of Pedro Ruiz, do appear in due and legal form, before your honour, and represent to you, that for purposes that interest the justice due to my client, I request your honour will be pleased to order Francisco Febles Dias, residing in the town of Arima, to appear in court, and on his oath in due form, without the least delay, declaring the same to be favourable to my client, that he may give his deposition, from what motive or from what cause he spoke relative to my client to his excellency the governor, to instigate him, to order the said Carlos to be put in prison, by assuring his excellency that it was the said Carlos, who had committed the robbery on Pedro Ruiz; and whether he did not on this occasion, interest himself so far in behalf of the cause of said Ruiz, as thereby to make it his own cause. In like manner I request, that your honour may be pleased to order, that Luisa Calderon, the mistress or concubine of the said Ruiz, may appear in court, who is at present confined in prison, and who also on her oath may depose, whether the said Pedro Ruiz did not induce her by repeated solicitations, to declare in her confession

that Carlos was the thief that had carried off the money supposed to have been stolen, and whether he did not, amongst other offers to persuade her, promise to marry her, if she complied; in like manner, I also request your honour to order Maria Calderon her mother, and Bernancia her sister, to be brought into court, to depose what they may know relative hereto, and with respect to any other particulars in this cause; and in like manner to order Pedro Josef Perez, the partner of Ruiz, to appear in court, and depose, whether true or otherwise, that he one day being in conversation with the aforesaid Maria Calderon, he had said, "that if they hung Carlos, it would also be necessary to hang his partner;" and, for said Perez to declare from what cause or motive originated the said expression; and farther I request your honor may be pleased to order Cathalina Vega and Conception Celidonia also to appear in court, both of whom reside in this port, that they on their oath, likewise in due form, may depose whether the officers Josef Flores and Rafael Chando, did not one day, whilst they were conveying the said Luisa Calderon out of court to prison, maintain a conversation with her; and whether they did not persuade her, by various suggestions, to declare constantly in her confession, that Carlos was the thief, and incite her to continue firm and inflexible to this declaration, notwithstanding every threat that any person whatever might make against her; and when these several depositions shall have been taken, the same may be annexed to the proceedings now carrying on, to have such effect as may be due thereto. I therefore request your honor may be pleased to pronounce and decree accordingly, the same being justice that I require. I make oath, that the foregoing does not proceed from any malice, and I also swear the needful, &c.

(Signed) DIEGO ANTONIO DE ALCALA.

As requested with citation of the adverse party.

(Signed) BLACK.

It was thus pronounced and decreed by his honor the judge of the second election, of this windward island of Trinidad, who signed said decree during the absence and by commission of the judge of the first election, in this Port of Spain, on the *fifteenth day of May*, in the year one thousand eight hundred and two, which I attest.

Before me FRAN^{co}. DE CASTRO.

I notified the foregoing decree to the petitioner, which I attest.

(Signed) CASTRO.

I duly cited Pedro Ruiz, which I attest.

(Signed) CASTRO.

On the same day an order was duly dispatched, for the appearance of Don Francisco Febles, which I attest.

(Signed) CASTRO.

On the *eighteenth day of May*, I cited Don Francisco Febles, which I attest.

(Signed) CASTRO.

[Deposition of *Francisco Febles*.]—

On the same day, personally appeared before his honor, the judge of the second election, Don Francisco Febles, of this district, to whom his honor in the presence of me, the notary, administered an oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, to whatever questions might be put to him; and accordingly, on his being interrogated relative to the tenor of the foregoing petition and memorial, and he being made acquainted therewith,—he deposed, that he had not spoken to his excellency the governor-general, to commit Carlos Gonzalez to prison, neither did he assure his excellency, that said Carlos was guilty of the robbery of Pedro Ruiz, neither did he take upon himself the cause of the said Pedro Ruiz, neither did he urge it as if he were personally interested therein; that all that occurred was as follows: that he, the deponent, being arrived in this port, from the town of Arima, he called at the house of his countryman Pedro Ruiz, as he is accustomed to do, and entering into conversation with him, on the subject of the robbery, there came a Mulatta, who joined in the said conversation, who was a neighbour of the said Pedro, and whose name is Tereza Alen, when she said, that on the same night of the robbery, she had seen a Spanish Mulatto named Carlos, who lived near the church, enter the foredoor of the house of the said Ruiz, in company with his housekeeper, Luisa Calderon; and on him, the deponent, asking her if Carlos had stopped long, she answered in French (un moment) a moment, and when this conversation finished, he, the deponent, went to dress himself, and afterwards went to pay a visit to the governor, as he has been accustomed to do, every time he comes to this port, being a respectful compliment he has hitherto observed; that his excellency, the governor, said to him the deponent, “So they have robbed Mr. Pedro,” to which the deponent replied, “So they say,” whereupon his excellency asked, what is meant by “so they say,” and had this expression any sinister or suspicious meaning? the deponent, thereupon said, “Sir, I have just

heard a conversation; which was that that had occurred with Teresa Alen: his excellency, the governor, then ordered Pedro Ruiz to be sent for, who, on his appearing, was ordered to fetch an officer, and to take up Carlos Gonzalez; that this is all he can depose, and is the truth, on his aforesaid oath, which he confirms, and will in case of need repeat it at a future time; that he is forty-eight years of age. The foregoing was then read to him, and he declared that the same was correctly written, and he signed hereto, together with his honour the said judge, which I attest.

(Signed) BLACK.

(Signed) FRAN^{co}. DE FEBLES

Before me FRAN^{co}. DE CASTRO.

[*Maria Calderon*.]—In continuation there personally appeared before his honour, the said judge, *Maria Calderon*, a free mulatta, to whom the said judge, in the presence of me the said notary, administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon she promised to relate the truth, to the best of her knowledge, to whatever questions might be put to her; and accordingly on her being interrogated, relative to the particulars of the foregoing petition and memorial, and being made acquainted therewith, she deposed, that she knew nothing more concerning the contents of the said memorial, than that she remembers that Pedro Ruiz, about three years ago, offered to marry her daughter Luisa; that she can only say further, that whilst her said daughter was in prison, she heard the Negroes say, that an officer of the guard had gone up to the room where said Luisa was confined, and had attempted to force her, or ravish her, and that although she cried out, no one went to her assistance, as the people were all asleep; but in the end the officer could not do any thing with her by reason of her defending herself so vigorously; that one night the Negro Antonio Gabriel, a slave belonging to Pedro Ruiz, came into her, the deponent's house, to get a light, when he told her the deponent, in the presence of her daughter Benancia, “That all the Negroes belonging to his master were bad; that whatever Pedro committed, the same was committed by Gerónimo; and that the former had entered the house of Domingo, and had stole a key of a trunk, from a Mulatto named Jose, and had opened the said trunk, and had already got in his hand a doubloon, and was in the act of taking more, when Jose entered, and took the key and the doubloon from him, and acquainted his master Ruiz thereof, who when concerting measures to punish him, the said

Pedro had run away: that this is all she can depose, and that the same is the truth, on her aforesaid oath; that she is fifty-eight years of age, a little more or less. The foregoing was then read to her, and she declared it was correctly written; she did not sign hereto, as she said she could not write; his honour the judge signed it, which I attest.

(Signed)

BLACK.

Before me FRAN^{co}. DE CASTRO.

[Benancia, a Mulatta.]—In like manner, there personally appeared before his honor, the said judge, the mulatta Benancia, to whom, in the presence of me, the notary, the said judge administered an oath, in due form, on God our Lord and on the sign of the Cross; and thereon she promised to relate the truth, to the best of her knowledge, to whatever questions might be put to her; and accordingly, on her being questioned relative to the contents of the foregoing memorial, and also with regard to herself as deposed by her mother Maria Calderon, and she being made acquainted therewith,—she deposed, that she can only depose and assert the same as has been deposed by her said mother, adding thereto, that with respect to the attempt made in the prison, that she, the deponent, intending to inform Mr. Vallot thereof, she was persuaded not to do it by Lewis Barry, who was also a prisoner; that this is all she can depose, and the same is truth on her aforesaid oath, which she confirms and ratifies, and in case of need will repeat it afresh at a future time; that she is twenty years of age. The foregoing was then read to her, and she declared it was correctly written. She did not sign hereto, as she could not write. His honor the judge signed it, which I attest.

(Signed)

BLACK,

Before me

FAN^{co} DE CASTRO.

On the same day, and by the means of the officer of the court Rafael Chando, I cited Catalina Vega and Concepcion Celidonia, which I attest.

(Signed)

CASTRO.

[Catalina Vega.]—In continuation, there personally appeared before his honor, the said judge, Catalina Vega, to whom, in the presence of me the notary, he administered the oath, in due form, on God our Lord and on the sign of the Cross; and thereon she promised to relate the truth to the best of her knowledge to whatever questions might be put to her; and accordingly, on her being interrogated relative to the contents of the memorial with respect to such part as concerned her, she

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deposed, that she can only say, that she heard Jose Flores, the officer, say to Luisa Calderon, at the time he was conducting her to prison, "say or tell if you saw Carlos take away the money;" to which Luisa replied, "I cannot say or tell what I do not know;" and this is all that she can depose, and is the truth, on her aforesaid oath; that she is thirty years of age. The foregoing was then read to her, and she declared that the same was correctly written. She did not sign hereto, as she could not write; his honor the judge signed it, which I attest.

(Signed) BLACK.

Before me FRAN^{co} DE CASTRO.

[Concepcion Celidonia.]—Immediately afterwards there appeared before his honor, the said judge, Concepcion Celidonia, to whom, in the presence of me, the notary, he administered the oath, in due form, on God our Lord, and on the sign of the Cross; and thereon she promised to relate the truth, to the best of her knowledge, to whatever questions might be put to her; and accordingly, on her being interrogated relative to the tenor of the memorial, with respect to such part as concerned her, she deposed, that one day she, the deponent, being in the house of Catalina Vega, now present, at the period of time when Jose Flores, the officer, had Luisa Calderon in custody passing by, they heard him say to her, "Say or tell if you saw Carlos take away the money?" to which said Luisa replied, "I cannot say or tell what I do not know;" and this is all that she knows, and that she can depose, and is the truth, on her aforesaid oath, which she confirms, and in case of need will repeat the same at any time; that she is full twenty-five years of age. The foregoing was then read to her, and she declared that the same was correctly written; and she did not sign hereto, as she could not write. His honor the judge signed it, which I attest.

(Signed)

BLACK.

Before me

FRAN^{co}. DE CASTRO.

[Luisa Calderon.]—Immediately afterwards there personally appeared before his honor the said judge, Luisa Calderon, in the custody of the officer Rafael Chando, to whom, in the presence of me the notary, he administered the oath, in due form, on God our Lord, and on the sign of the Cross; there being also present her guardian and advocate Don Juan Bermudez; and on her said oath, she promised to declare the truth to the best of her knowledge, to whatever questions might be put to her; and accordingly, on her being

interrogated relative to the tenor of the memorial, with respect to such part as concerned her; and on her being made acquainted therewith, she deposed, that it was not true that Pedro Ruiz had influenced her, that in her confession she should particularize who had committed the theft of the money from the said Pedro Ruiz; that it was true said Ruiz had promised to marry her, but that it was previous to the robbery; that this is all she knows, and that she can depose on her aforesaid oath; that her age is the same as is mentioned in the former and chief part of the proceedings. The foregoing was then read to her, and she declared that the same was correctly written; she did not sign it, as she could not write. His honor the judge signed it, together with her advocate, which I attest.

(Signed) BLACK.

(Signed) JUAN BERMUDEZ.

Before me FRAN^{co}. DE CASTRO.

Immediately afterwards, I cited Pedro Joze Perez, by means of Rafael Chando the officer, which I attest.

(Signed) CASTRO.

[*Pedro Joze Perez.*] — Soon afterwards, there personally appeared before the said judge, Pedro Jose Perez, to whom, in the presence of me the notary, he administered the oath, in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, to whatever questions might be put to him; and accordingly, on his being interrogated relative to the contents of the memorial, on such part thereof as concerned him, he deposed, that no such conversation ever took place as is therein stated, neither the words, "that should Carlos be hung, it would be requisite to hang his, the deponent's, partner;" that this is all he knows, and that he can depose, on the matter aforesaid; and that the same is the truth, on his aforesaid oath; that his age is the same as is expressed in the former and chief part of these proceedings. The foregoing was then read to him, and he declared the same was correctly written, and he signed hereto, together with his honour, which I attest.

(Signed) BLACK.

(Signed) PEDRO PEREZ.

Before me FRAN^{co}. DE CASTRO.

To his Honour the Judge of the first Election:

Diego Antonio de Alcala, the attorney of Carlos Gonzalez, a prisoner in the public prison of this port, on behalf of the evidence that I bring forward in the criminal cause that is prosecuting against

said Carlos, do appear before your honor in legal form, and do represent to you, that for the purpose of amplifying the evidence, I require that your honour will be pleased to order Domingos Rodriguez to appear in this court and to give his deposition on oath (declaring that this step is favourable to my client), whether, some few days previous to his last voyage to the island of St. Margarita, from whence he is now returned, when in the hall of my office, he did not inquire of me what legal steps were requisite to be adopted to prove, and legally proceed in consequence of the breaking open of his desk, or book-case, that had been committed by a black slave of Pedro Ruiz, from whence he had stole a certain sum of money, to oblige and compel his master to pay the same, as he knew it for a certainty that the said negro was the guilty person; and that after I had given my opinion relative to his inquiry, he went home, saying to me, that he would afterwards return; and whether at the expiration of two or three days subsequent thereto, when I met him in the street, I asked him what he had done in this affair that he had proposed to me, whether he did not acquaint me, that he had accommodated the business with the said Ruiz, as the latter did not wish to have it known that his negro was the thief, and thereupon had paid him the money he had been robbed of; and on this his deposition being taken, that the same be annexed to the aforesaid evidence that in due time, it may have the effect as may be suitable.

I request your honor will be pleased to order and direct accordingly, it being justice that I require, and I swear, &c.

(Signed) DIEGO ANTONIO DE ALCALA.

"As requested."

(Signed)

FARFAN.

It was thus decreed by his honor, the judge of the first Election of this windward island of Trinidad, who signed thereto in the said island on the *twenty-fourth day of May*, in the year one thousand eight hundred and two, which I attest.

Before me FRAN^{co} DE CASTRO.

I notified the contents thereof to the petitioner in his own house.

(Signed) CASTRO.

I cited the advocate of Luisa Calderon which I attest.

(Signed)

BERMUDEZ.

(Signed)

CASTRO.

I cited Domingos Rodriguez, which I attest.

(Signed)

CASTRO.

In the Port of Spain, in the windward island of Trinidad, on the *twenty-fifth day of May*, in the year one thousand eight hundred and two, personally appeared before his honor, the judge of the first election, Domingo Rodriguez of this place, to whom the said judge, in the presence of me the notary administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth to the best of his knowledge, to whatever questions might be put to him; and accordingly, on his being interrogated relative to the particulars of the foregoing memorial, and he being made acquainted thereof, he deposed,—that it is truth, that one day, now some months since, but cannot exactly specify the time, when a negro slave of his, named Jose Vitoriano, on going backwards to ease himself, dropt the keys of his book case or desk, which, notwithstanding his most diligent searches, he could not find them again; and his said slave having a suspicion that the negro Pedro, the slave of Pedro Ruiz, had picked them up, he asked him for them several times, but he always denied having them; that in consequence of this, his said black Jose agreed with Jose Maria, his fellow or companion, the slave of D^a. Ysavel Dragas, to pretend to be off their guard, and to leave the house; further, that Jose Maria, his companion, should conceal himself, and that the deponent's slave should go out into the street to procure candles to be lighted, which accordingly they put in practice, entrusting the care of the house to the said Pedro, who immediately that he thought himself alone, took out the keys that had been lost, which were five in number, and without the slightest delay or hesitation, notwithstanding he was in the dark, he introduced a key into the lock of the book-case or desk, and then opened the drawer, in which there were a quantity of doubloons and not the other drawers, in which was deposited silver and other coins or money; and as the said Jose Maria who was hid, was all the time observing him, he immediately came upon him by surprise, together with the negro Jose Vitoriano, and they detected him with one doubloon in his hand, which they took from him, and put back into its place again, and kept the keys; that this relation of what had passed was made to him, the deponent, by the aforesaid negroes, immediately on his, the deponent's, return to this port, from the island of St. Margarita, being his last voyage: that he, the deponent, afterwards proceeded to examine his book-case, or desk, and his money; and by taking an account of what had been sold during his absence, there was

not the quantity of money there ought to have been, there being deficient, according to his moderate calculation, from three hundred and fifty to four hundred hard dollars; and he, the deponent, suspecting that the said negro, Pedro, had been guilty of this robbery (for of all the persons employed in his warehouse he entertained the highest confidence), he made application to the said Pedro Ruiz, requiring him to make good this deficiency, who, in reply, assured him, that he knew nothing of the robbery; that there was the said negro, and he might punish him in a legal manner, or that he might do with him as he might think proper; but as to himself (Ruiz) he would not pay any thing; that in consequence of this answer, he, the deponent came to the determination to sue him for his money at law; but that a short time after, Don Juan Carthan, and other friends interfered; whereupon, he, this deponent, declined going to law, as he had at first intended. That this is all that has occurred relative to the matter in question, and is the truth, on his aforesaid oath, which he confirms, and will always repeat the same when required; that he is thirty-two years of age. The foregoing was then read to him, and he declared the same to be correctly written, and he signed hereto, together with his honor the said judge, which I attest.

(Signed)

FARFAN.

(Signed)

DOMINGO RODRIGUEZ.

Before me

FRANC^o DE CASTRO.

In the Port of Spain, on the *twenty-fifth day of June*, in the year one thousand eight hundred and two, I, the notary, in pursuance of the order pronounced by decree, on this day, by his honor, the judge of the second election, by commission that was conferred on him during the absence of the judge of the first election, which said decree is inserted at fo. 69 in these proceedings, that by his order, I have annexed, and have added thereto, the evidence brought forward by the parties; and I now deliver them to Don Diego Antonio de Alcala, the attorney of Carlos Gonzalez, for him to allege thereto, as by right, which I attest.

(Signed)

CASTRO.

To his Honor, the Judge of the first Election :

Don Diego Antonio de Alcala, the attorney of Carlos Gonzalez, a free mulatto, now confined in the prison of this port, for the robbery he is accused of having committed on Pedro Ruiz of two thousand hard dollars and upwards, which said Ruiz said he had in his shop or room, in a trunk that was broke open on the seventh day of December last, be-

tween the hours of six and seven o'clock in the evening, of which at the same time he gave information to his excellency the governor; in consequence of the delivery to me of the proceedings transacted, and of the evidence produced, I do appear, in due and legal form, before your honor, without prejudice to my client in any way whatever; and I beg leave to represent to you, that your honor, according to the merits of this cause made up and prepared for definitive sentence, and with due attention to the merits of the process, ought to declare the accusation of Pedro Ruiz to be unfounded and malicious, and the robbery to be false and fictitious, which has been reported to have been committed; and that all that has been hereon deposed, has proceeded from malice; by declaring said Ruiz to be an impostor, and condemning him in the pains and penalties of the law, as is demanded and required by the merits of the proceedings; justice requiring this decision, with every point else of fact and right generally and consequently.

From the summary, it is evident, that my client is innocent, and clear of the slightest guilt with respect to the robbery he is accused of by the person supposed to be robbed, as no one of the witnesses has declared having seen the commission of the act, nor any action whatever, on his part, that can operate as a proof against him, or even any ground for suspicion.

The first deposition of Tereza Alen merely expresses, that on the said seventh, she saw Carlos pass by; that she wished him good evening, that she saw him enter the house of Pedro Ruiz, and speak to Luisa Calderon; and that afterwards she saw him depart, by the back way, from the house of the said Ruiz, towards the water-side.

The second deposition, being that of Joseph Rodriguez, expresses, that he spoke with him the same evening, at his own door, and that afterwards he did not know where he went.

The third deposition, is that of Cyprian Villanueva, which expresses, that he on the same day, heard it reported that Ruiz had been robbed; and that Hilario Arnaud informed him, that he had seen Carlos pass by towards the house passage of Ruiz; and that he afterwards saw him come out again, and proceed towards his own home; but he does not say, that the said Carlos carried any thing in his hands, or about his person: and of the same complexion are all the other depositions, without its being possible to infer from them any proof of guilt whatever against my client; but solely a slight suspicion and the circum-

stance, that no person whatever can deny that every man is liable to faults; but, in this particular, I am fully persuaded that this crime has not been committed by my client; but it may much stronger be inferred from the said summary, that the accusation is false, and the robbery fictitious: which last supposition is supported by the depositions of Salazar and Perez, at folios 12 and 14, and others that favour and support with good foundation this conjecture.

It is certain that Luisa Calderon, the mistress, or concubine of Pedro Ruiz, after having deposed, on her solemn oath, that she was ignorant who had committed the robbery—and, were it a real robbery, when she confessed that Carlos had committed it, no stress or reliance should be laid thereon, as her confession was made while under torture, on which occasion the guilty generally declare whatever is insinuated to them in contradiction to the truth for the sake of being released from their sufferings; and she may have done the same, not finding herself capable of enduring them, from the weakness of her constitution, as also from her tender age, not being as yet fifteen years old, and from not having a person near her to encourage or revive her. And the said confession being afterwards confirmed by her, probably resulted from the same motive of fear; for which cause and substantial reasons, this her deposition ought to be considered as null, and of no effect.

To this may be added, that this poor young girl had been seduced and persuaded to make this deposition, by the officers, Josef Flores and Rafael Chando, as plainly may be seen by the depositions of Cathalina Vega and Concepcion Celidonia,—conduct most assuredly worthy of punishment on those officers for such abuse of their office, so degrading to the judicial authority, and prejudicial to my suffering client.

The only deposition that is met with in the summary, that can in any manner prejudice my client, is that of Juan de la Rosa; but in the same it is remarked, that the contents evidently manifest animosity arising from an old grudge. From this, and the witness being an artful designing person, and a man of no repute, no credit whatever is due to him; and in like manner should be considered, that whereas he, the said witness, being a poor day-labourer, would he put up with a loss of fifty Portugal pieces, to avoid engaging himself in a civil suit, when by his depositions he solicits a criminal suit? hereby is rendered very evident, his animosity and deceit, and consequently that said witness is deserving of contempt.

Carlos in his deposition positively

denies having committed the robbery he is accused of, and confesses and declares that he has not incurred any other guilt, than having an intrigue with Ruiz's girl; this he confirmed when the examination of them both was taken face to face, notwithstanding all the questions, cross-questions, and cross-examinations that were adopted to make him any way deviate therefrom. There is no doubt but Carlos committed a crime by having illicit commerce with this girl, but this in a man in his condition of life, ought not to be legally alleged against him, unless his wife, as being the sole party aggrieved, should require it. From this circumstance, we ought (judging rationally) to surmise, that Ruiz being jealous, and feeling himself hurt by what he conceived to be an injury, adopted this mode of revenge, by inventing this slanderous accusation to appease his own anger, attributing and laying to the charge of him, Carlos, a crime he was not capable of committing, or any other person of even less repute, especially in the time present, when justice is dispensed and administered with rectitude without distinction of persons.

It appears by the proceedings substantially proved, that Pedro Ruiz has sundry times pretended to have been robbed; that he never attempted to prove the robberies that he said had been committed on him, to vindicate his honor; for which reason he was disgracefully turned away from the places wherein he had been employed. It is therefore very probable, that on this occasion, he may have deceitfully machinated or invented this story, to execute his revenge; for he that is capable of committing one offence, is capable of committing a hundred.

The contradiction that is evident in the depositions of this accuser, of Febles, and of Rodriguez, must convince us, without a shadow of doubt, that there exists artifice and evil intention; and it is also evident, from the other depositions, that Ruiz, from the manner of his having commenced trade, and the actual business transacted by him, could not be possessed of sufficient funds to sustain a robbery of two thousand dollars and upwards, as has been stated that he was robbed of; and that on the day following, he should engage in purchases and sales, without betraying the slightest want of money, nor any disquietude of mind in consequence of such a loss, which certainly would naturally have caused him vexation, especially when it is known that he is not very liberal. It also appears by the proceedings, that the said Ruiz has in his house a negro slave named Pedro, known generally in this

place to be a thief, for which bad propensity he was sold by his former master; and that the said negro, as a sample of his ingenuity, some few days after the commencement of this cause, committed a robbery on Don Domingo Rodriguez, a neighbour of his master, of a certain sum of money, by breaking open a desk or book-case; and that the said Ruiz had compromised the matter with Rodriguez, that the affair might not transpire, and to prevent any discredit attaching to his accusation that he had made against my client. Not one of the witnesses deposes anything further, than having seen Carlos go in and come out of the house of Ruiz, and proceed to his own home in a short space of time; from which it may be very justly inferred, that in this space of time, he could not have accomplished the breaking open, the theft, and the concealment of so considerable a sum of money, the chief part of which was in silver as stated by the accuser. With more reason might said Ruiz have attributed this robbery to his concubine, and others of her family, who were always on the spot, as also his negro—persons who are poor and wretched—and not tax my client therewith; being, as he really is, a man of property, as was proved by the legal measure of the attachment.

For all these reasons, it should be justly supposed, that the robbery was fictitious; and were it real, that the same was committed by the other individuals and servants; that the accusation was made for the purpose of revenging himself for the supposed insult, as I have herein before expressed, or perhaps it might have proceeded from envy (that generally is the vice of the ambitious), at observing that my client had a larger capital than himself, and from his good conduct well established, and who by the integrity of his dealings has acquired the confidence of the most considerable merchants and traders in this port.

In conclusion I declare that my client is not guilty, either by confession or proof, according to the merits of the proceedings; but from the same it appears, that Ruiz, by an offence to justice and law, has proceeded with a depraved intention in such a manner, that I am of opinion he deserves to be pronounced a false plaintiff, and slanderous accuser. Therefore by law and strict justice, for the complete vindication of the fame and character of my client, and as a tribute due to the public tranquillity, he, the accuser, ought to be condemned in the penalty enacted by law of retaliation; which is the same penalty or punishment that would be inflicted on the accused party were the crime proved against him; as p. law 26, tit. 1, pa. 7,—incur-

ring the same by the act of wishing or attempting to drop the accusation, after the same was made, pretending not to understand the cause, or affecting ignorance thereof, law 29, tit. 1, p. 7; or otherwise, by an arbitrary punishment, as is expressed by Bolanos Parr 8, N^o. 13.; as also in the indemnification of the costs, damages, and prejudices that my client has sustained from his long imprisonment that he has suffered, and still suffers; that such sentence may operate in future, to deter and prevent such proceedings, and conduct so contrary to the laws, both human and divine, and that may serve as an example to other evil-minded persons, I thus represent to you, preferring a request as may be most fitting and just.

I request your honour, as the delivery of the copy was duly performed, that you may be pleased to decree in manner as hereinbefore requested, pronouncing my said client to be free and absolved from all crime, with reservation to him of his right to sue and claim whensoever it may be suitable, from all those who have been the authors of his prejudice; condemning his accuser in the costs incurred, or that may yet be incurred; the same being justice, which I implore; and I swear I have no sinister motive, also the needful &c.

(Signed) DIEGO ANTONIO DE ALCALA.

On reference to the acts, and whereas this cause is substantiated by commission of his excellency the governor and captain-general, the said cause must be transmitted to him by the hands of the notary hereof, at the same time with due observance of all the forms as usual and customary.

(Signed) JPH. FRAN^{co}. FARFAN.

It was thus decreed by his honor the judge of the first election of this island of Trinidad, who signed the same in the Port of Spain on the *sixth day of July* in the year one thousand eight hundred and two.

Before me FRAN^{co}. DE CASTRO.

I made known the same to the petitioner, or defendant's attorney, which I attest.

(Signed) CASTRO.

I notified and made known the same to Pedro Ruiz, which I attest.

(Signed) CASTRO.

And the same legal service I performed on the advocate of Luisa Calderon, which I attest.

(Signed) CASTRO.

To his Honor the Judge of the first Election:

Don Diego Antonio de Alcala, the at-

torney of Carlos Gonzalez, in the criminal cause that has been prosecuted against him, for the robbery that he was accused of, do appear before your honor; and in due and legal form, I represent to you, that for the more fully substantiating the evidence produced on this behalf, and in due observance of the copy of the process pending, I request your honor will be pleased to order the personal appearance of Dom^o. Rodrig^o., and of Pedro Perez, that they, on their solemn oath, may declare—the former of these, whether it is true, that some few days back, being in confidential conversation with Juana Talavera, the wife of Carlos, he told her, that the aforesaid Pedro Perez, within a few days back, had adjusted the accounts of Pedro Ruiz, and according to the money he had in hand, previous to the purchases and sales that he had transacted, subsequent to the commencement of this cause, and what he now actually possessed in cash, he had come to the positive knowledge, that there had been no robbery whatever committed, and that said robbery was merely a supposition of Ruiz. And that the aforesaid Pedro Perez may make his deposition with respect to the same, as also whether he did or not inform Rodrigues and other persons, that what he had before deposed proceeded from doubts in his mind, and fear of erring. And when these depositions shall be taken, that the same be annexed to the acts and evidence already given, that they may operate the effect as may be suitable. And accordingly, I request your honor will thus order and decree, the same being justice that I require, and I swear the needful &c.

(Signed) DIEGO ANT^o. DE ALCALA.

As decreed already this same day to the memorial of the same petitioner.

(Signed) FARFAN.

It was thus decreed by his honor, the judge of the first election of this island of Trinidad, who signed the same in the Port of Spain, on the *sixth day of July*, in the year one thousand eight hundred and two, which I attest.

Before me FRAN^{co}. DE CASTRO.

I made the same known to the petitioner, which I attest.

(Signed) CASTRO.

There being first duly observed the usual forms and solemnities, I delivered into the hands of his excellency, the governor, these proceedings, in pursuance of the decree, which I attest.

(Signed) CASTRO.

Duly considered and examined these proceedings: it is hereby declared, that

the robbery was committed by Carlos Gonzalez according to the evidence, and other circumstances expressed in this cause; and in consequence thereof, inclining to equity and mercy, he is hereby condemned to perpetual banishment from this island, to a fine of one thousand eight hundred hard dollars, to pay all the costs of this process, and to labour on the public works till the terms of this his sentence shall be fulfilled; which said fine shall be applied to indemnify the said Pedro Ruiz. And the Mulatta Luisa Calderon shall be set at liberty, and considered to have expiated her offence by the long imprisonment she has suffered.

(Signed) THO'. PICTON.

It was thus pronounced, decreed, and signed by his honor the governor and captain-general of this windward island of Trinidad, who signed the same in the Port of Spain, on the *third day of August*, one thousand eight hundred and two; which I attest.

Before me FRAN^{co}. DE CASTRO.

On the same day, I, the notary, proceeded to the royal prison; and being therein, I notified and made known the foregoing sentence to Carlos Gonzalez, who having heard the same, he was fully made acquainted therewith, which I attest.

(Signed) CASTRO.

In continuation, I notified the same to his attorney Don Diego Antonio de Alcala, which I attest.

(Signed) CASTRO.

And in continuation, I, the notary, being in the said royal prison, and there being also present Luisa Calderon and her guardian Don Juan Bermudez, to them personally I notified and made known the foregoing sentence, who accordingly became acquainted therewith, which I attest.

(Signed) CASTRO.

In continuation, I proceeded to the house of Pedro Ruiz, to whom I made known the foregoing sentence, who heard and understood the same, which I attest.

(Signed) CASTRO.

In continuation, and on the same day, I notified the same to Pedro Josef Perez, which I attest.

(Signed) CASTRO.

The like notification I served on Juana Talavera personally, which I attest.

(Signed) CASTRO.

I delivered over these proceedings to the official person to be taxed, which I attest.

(Signed) CASTRO.

N. B. That the officer Rafael Chando has executed seven services out of town, and forty in this city or port, and the officer Joze Flores has executed sixteen in this port.

(Signed) CASTRO.

Taxation of the Costs.

To his honor, the judge, for 12 decrees, at 2 reals each.....	24
To one common and four ditto interlocutory, at 4 reals each	20
To 24 depositions, at 4 reals each.....	96
To a legal diligence of attachment and deposit.....	10
To one confession.....	8
To 2 surveys at 6 reals	12
To assigning an advocate	4
To 9 confirmations of depositions at 2 reals	38
To perusal or sight.....	114
	326
To the Interpreter Bermudez for 5 depositions, at 4 reals.....	20
To the interpreter Tellineau, 3 depositions and 8 confirmations, at 4 reals	44
To the doctor Dn. Wm. Williams, for one visit.....	18
To the notary for an act of process.....	8
To 36 depositions, at 8 reals..	288
To 8 ditto with 13 interrogatories	176
To 9 acts, 4 of them interlocutory, at 6 reals.....	54
To 39 notifications, at 4 reals..	156
To 21 legal services, at 2 reals	42
To 2 acts of torture, at 60 reals	120
To 19 confirmations, at 4 reals	76
To 2 examinations face to face, at 6 reals	12
To 5 notes or memorandums..	5
To 4 attendances, searching the houses of Gonzalez, Ruiz, and Calderon, at 12 reals ..	48
To 14 presentments, at 4 reals	56
To one bail bond	20
To 2 certificates of defendants being actually in prison, at 12.....	24
To the attachment and deposit of the effects	20
To one confession	12
To one visit on survey	20
To one ditto	20
To one acceptance and oath or affidavit	8
To one assignment of counsel or advocate.....	8
To one power of attorney	16
To one delivery and filing the proceedings.....	8
To one sentence.....	12
To 94 leaves of writing at 1½ reals	141

To common paper	6
	1356 1356
To the officer Rafael, 7 services executed in the country, and 40 in town	328
To the officer Josef Flores, 16 ser- vices, at 4 rials	64
To taxing these costs	125

Rials 2281

Total two thousand two hundred and eighty one rials. Taxed in conformity to law. Port of Spain, 5th of August 1802.

(Signed) BENITO LUCIA DE GONZALEZ.

Regulations.

To the memorials of Gonzalez and his wife with sight of the acts ..	335
To Don Juan Burmudez, for his memorial with sight of the acts ..	142
To Pedro Ruiz for two memorials ..	27
To Josef Perez for one ditto	9
To this regulation	36

Rials 549

Total five hundred and forty-nine rials
Date as aforesaid.

(Signed) GONZALEZ.

To His Honor the Governor General:

Carlos Gonzalez of this place, now confined in the public prison for the robbery committed on Pedro Ruiz, which said robbery has been laid to my charge, do, in due and legal form, appear before your honor; and represent to you, that the official notary has notified and made known to me the definitive sentence pronounced by your excellency, by which I am condemned to perpetual banishment from this island, in the fine of one thousand eight hundred hard dollars, and the costs already incurred, and that still may be incurred. In consequence thereof, and that with the money in hand and other property deposited, as appears by the acts, there exists a sufficient amount to pay the said fine, with the costs; I humbly request from the benignity of your excellency, that you may be pleased to order that permission be granted me to remove to my own dwelling-house, wherein my confinement shall be strictly observed and continued, on the same conditions and terms, as were I confined in the said prison, until the moment arrives for my departure from this said island, and till all the legal measures have been practised, as usual on these occasions. At the same time granting me the favor of an authentic copy of the acts, which I am in want of for the purposes as may suit my interests; and accordingly I request and implore that your excellency may be pleased to pronounce and order in manner as I have petitioned,

whereby I shall enjoy favor and justice, as solicited. I swear the same has no sinister motive, and the needful, &c.

Furthermore, for the greater security of my person, and of my close and strict confinement, as hereinbefore promised, I am ready to furnish the legal security for close confinement; for which purpose, I propose as my bondsmen, Don Geronimo Bernaza and Josef Barthellier. I hope your excellency will approve of them, and that you will be pleased to grant me this favour, being justice—*ut retro*. For my lawful husband,

(Signed) JUANA TALAVERA.

The decree must be put in force.

(Signed) TH. PICTON.

His excellency, the governor and captain-general of this island of Trinidad, thus ordered and signed, on the *fifth day of August*, in the year one thousand eight hundred and two.

Before me FRAN^{co}. DE CASTRO.

I thereupon immediately notified the same to the petitioner personally, which I attest: (Signed) CASTRO.

To his Honor the Governor-general:

Carlos Gonzalez, now a prisoner in the public prison, in the most humble and respectful manner do appear before your excellency; and represent to you, that whereas there actually exist, in the possession of Don Miguel Pietry (in deposit), the money, the vessel, and other property and effects that were found in my possession when the attachment was laid thereon; and therewith, or the value thereof, there is a sufficiency to discharge the fine and costs, I humbly request your excellency will be pleased to order, that I may be set at liberty to depart this island with all possible dispatch; and in case the property attached should not be sufficient to fulfil the said payments, the aforesaid Don Miguel Pietry will become my security to fully pay the same; for which purpose, he signs this my petition. Under these circumstances, I hope, from the benignity of your excellency, that you will accede to my request, whereby a favour will be conferred, as also justice, which I solicit; and I swear, &c.

(Signed) JUANA TALAVERA.

(Signed) MIGUEL PIETRY.

The high constable shall conduct him to the beach or quay, when his embarkation takes place, for him to pursue his destination.

(Signed) TH. PICTON.

His excellency, the governor and captain general of this island of Trinidad, thus ordered, and signed thereto, on the

eightth day of August, in the year one thousand eight hundred and two.

Before me FRAN^{co}. DE CASTRO.

I notified the same to the petitioner, on the date as aforesaid.

(Signed) CASTRO.

On the aforesaid day, the deputy high constable caused the said Carlos Gonzalez to be conducted to the beach or quay of this port; and there being present thereon the master of the launch or vessel, Dⁿ. Josef Esparragoza, I delivered the said Gonzalez to him, putting him on board of the said vessel; and the aforesaid master acknowledged the said delivery, and passed a receipt in due form; and he signed hereto, together with the said high constable, which I attest.

(Signed) MANUEL DE GARMINDRA.

(Signed) JOSEF ESPARRAG^{za}.

(Signed) CASTRO.

To the Governor General :

Juana Talavera, the lawful wife of Carlos Gonzalez, do, in due and legal form, appear and represent to you, that for the perfecting and accomplishing the conclusion of this cause that has been prosecuted against my said husband, it is fitting that Dⁿ. Miguel Pietry, the depository of the effects that were attached, should furnish a proper account of the said deposit, with the particulars of the charges and disbursements that he may have made by order of the Court; as also of the freights that have been earned and acquired by the vessel during the time the said vessel was under his control; and that I may have perusal thereof allowed me, that I may be enabled to remark thereon, as may be suitable and conformable to my just rights. I therefore request your excellency may be pleased to order and decree accordingly, the same being justice that I require, &c.

(Signed) JUANA TALAVERA.

"As requested."

(Signed) TH. PICTON.

It was thus decreed by his honor the governor and captain-general of this windward island of Trinidad, on the *nineteenth day of August*, in the year one thousand eight hundred and two, which I attest.

Before me FRAN^{co}. DE CASTRO.

I notified the same to the petitioner, which I attest. (Signed) CASTRO.

The like notification I served on the depository, Don Miguel Pietry, which I attest. (Signed) CASTRO.

To His Honor the Governor and Captain General :

Juana Talavera, the lawful wife of Carlos Gonzalez, do, in due and legal form, appear and represent to you, that for the perfecting and accomplishing the conclusion of this cause that has been prosecuted against my said husband, it is fitting that Dⁿ. Miguel Pietry, the depository of the effects that were attached, should furnish a proper account of the said deposit, with the particulars of the charges and disbursements that he may have made by order of the Court; as also of the freights that have been earned and acquired by the vessel during the time the said vessel was under his control; and that I may have perusal thereof allowed me, that I may be enabled to remark thereon, as may be suitable and conformable to my just rights. I therefore request your excellency may be pleased to order and decree accordingly, the same being justice that I require, &c.

los Gonzalez, before your excellency do in due and legal manner appear, and represent to you, that a long time has transpired, that the schooner which was attached has been at anchor in this port without being employed, by which great prejudice and loss accrues from this delay; I request your excellency will be pleased to order the same to be valued by Rafael Antoneli, the ship-carpenter, and some other person that may be named by the court, that the same may be sold at public sale; and appointing for that purpose, by virtue of this act, the twenty-first day of the present month, giving previous notice of said public sale, by bills posted up on the public places. I therefore request your excellency will be pleased to order and decree accordingly, the same being justice that I solicit, and I swear, &c.

(Signed) JUANA TALAVERA.

"As requested, with all dispatch."

(Signed) TH. PICTON.

It was thus decreed by his honor the governor and captain-general who signed the same in the Port of Spain, on the *nineteenth day of August*, in the year one thousand eight hundred and two which I attest.

Before me FRAN^{co}. DE CASTRO.

I notified the same to the petitioner, which I attest. (Signed) CASTRO.

On the same day I notified to Rafael Antoneli the aforegoing nomination, as an appraiser; and on his being acquainted therewith, he declared that he had accepted and does accept the said nomination, as an appraiser; and he made oath, on God our Lord, and on the sign of the Cross, to act therein truly and impartially, and he did not sign hereto, as he could not write; and I, the said notary, signed hereto, which I attest.

(Signed) FRAN^{co}. DE CASTRO.

In continuation, his excellency the governor having nominated Juan Bautista Loroselo as the other appraiser, I notified the same to him accordingly, and on his being acquainted therewith, he declared that he had accepted and does accept the said nomination; and he made oath, on God our Lord, and on the sign of the Cross, to act as such truly and impartially: he did not sign hereto, as he could not write; and I the said notary signed hereto, which I attest.

(Signed) FRAN^{co}. DE CASTRO.

Immediately afterwards, there appeared in the hall of my office, the two appraisers that had been nominated, and they declared, that in pursuance of the charge conferred on them, they had inspected and surveyed, with all due and

possible attention, the schooner in question; and in her actual state, they value the hull and masts at one thousand hard dollars, and her boat, being in good trim, they valued at eighty dollars; which said estimate they declared they had made without fraud or collusion, on their oath as aforesaid: they did not sign hereto, as they could not write. I, the notary, signed hereto, which I attest.

(Signed) FRAN^{co}. DE CASTRO.

On the *twentieth of the present month of August*, there personally appeared in the hall of my office Juana Talavera, and she declared that for the purpose of estimating the sails, cordage, and rigging, she nominated Juan Zenteno, a competent person, and experienced in these articles.

(Signed) CASTRO.

Immediately afterwards, I notified to Juan Zenteno the aforesaid nomination, and he being acquainted therewith, he declared, that he had accepted and does accept the foregoing nomination, and he made oath on God our Lord, and on a sign of the Cross, to fulfil the same with strict fidelity, and he signed hereto, which I attest.

(Signed) ZENTENO.

Before me FRANCISCO DE CASTRO.

On the same day, there personally appeared in my office, Juan Zenteno; and he declared, that in pursuance of the charge conferred on him, he had inspected the sails, cordage, and rigging, and other furniture of the schooner in question, and expressed in these proceedings, and according to the actual state thereof, he had valued, and does value the same at two hundred and forty hard dollars; which said estimate he declared having made to the best of his knowledge and understanding, without fraud, or collusion, as he had promised to do on his oath as aforesaid, and he signed hereto, which I attest.

(Signed) JUAN ZENTENO.

Before me FRANCISCO DE CASTRO

I cited Juana Talavera, which I attest.

(Signed) CASTRO.

I cited or summoned the drummer, by means of Manuel the officer, which I attest.

(Signed) CASTRO.

I cited or summoned the common crier, by means of the same officer, which I attest.

(Signed) CASTRO.

In the Port of Spain, in the windward Island of Trinidad, on the *twenty-first day of August*, in the year one thousand eight hundred and two, his honor Don John Black, ordinary judge of the second election thereof, commissioned by his ex-

cellency the governor to transact this legal measure, and attending for this purpose, on behalf of the Court in the public place, as is usual and customary, at eleven o'clock in the morning, to effect the sale, transfer, and auction of the schooner mentioned in these acts, and it being first announced by beat of drum, and afterwards by the mouth of Silvestre, a black slave, who acted as common crier, there not being a regular one, who published with a loud voice "Is there any one here who is inclined to bid for a schooner, with all the sails, cordage, boat and other appurtenances, belonging to her for the purposes of navigation in their actual state, being the property of Carlos Gonzalez, the whole thereof valued at the sum of one thousand three hundred and twenty hard dollars, let them come forward, as they are now admitted to bid; and the same will be sold to the highest bidder at twelve o'clock precisely, by the clock or watch then pointed to." The said public sale was thus published sundry times, but no bidder offered in consequence thereof, and the limited time having expired, his honor ordered this act to be suspended, and he signed hereto, the witnesses being Don Dionicio Urbanexa, and Don Jose Alvarez, residing herein, who were present, which I attest.

1802 *February 14th*.—Account of the expenses, incurred by the schooner belonging to Carlos Gonzalez, while under the management of Don Miguel Pietry, by order of the Court, *viz*;—

„ 25lb. of biscuit	dollars	3	0
„ 25lb. of cured beef		2	4½
„ 37lb. of oakum at 1½ rials			
per lb.		6	1½
„ 1 barrel of tar		12	0
„ 38 days work of caulkers at			
2 dollars		76	0
„ 4 empty casks		6	0
„ 15lb. of oakum, at 1½ rials			
per. lb.		2	4½
„ 2 bottles of rum		0	4½
March 19.—25lb. of biscuit		3	0
„ 25lb. of salt fish		2	0
„ Clearances and dispatching		28	0
„ To a flag		3	7
„ To a line for do		1	0
„ To an empty tar barrel		0	8
„ To a bucket		1	0
„ 25lb. of fish		2	0
„ 1 barrel of biscuit		11	0
„ 1 boat		96	0
„ 25lb. of fish		2	0
„ 25lb. of cured beef		3	0
„ 25lb. of cured beef		3	0
„ 1 gallon of rum		0	5½
„ 50lb. of biscuit		7	0
„ 1 barrel of biscuit		11	0
„ 50lb. of cured beef		6	0

March 19—1 barrel of biscuit .. 10 0

Total dollars 299 8½

„ To Hambro' line and nails .. 0 4½
 „ Cordage bought of Senr.
 Crêto 36 6
 „ Ditto of Gutuvo and Saya .. 11 6½
 „ 1 barrel of biscuit 11 0
 „ 1 gallon of rum 0 5
 „ 1 barrel of biscuit 10 0
 „ 1 barrel of salt provision 17 0
 „ 1 barrel of biscuit 0 5½
 „ 2 arroves of cured beef 6 0
 „ Tallow at sundry times 30 0
 „ 25lb. of fish 2 4
 „ Planes (fruit) 1 0
 „ 1 barrel of biscuit 12 0
 „ 1 gallon of rum 0 5
 „ 12½lb. of salt cod 1 4½
 „ 25lb. of cured beef 2 4½
 „ 25lb of fish 2 0
 „ 1 gallon of rum 0 5
 „ 12 vars of binding 8 0
 „ 3 pieces of canvas for the
 fore-sail 54 0
 „ Cordage for the tackle 6 0
 „ 1 cable 53 1
 „ 25lb. of biscuit 3 0
 „ 1 barrel of biscuit 10 0

Dollars 580 6½

„ Hambro' line to sew the fore-
 sail 2 7
 „ Paid sail-maker for making
 do 24 0
 „ 1 gallon of rum 0 5
 „ Sundry nails, &c. that the
 captain procured 38 0
 „ Two days hire of a lighter,
 at 8 dollars 16 0
 „ One day's do. per Mr. Bois-
 siere 8 0
 „ From the 14th of February
 to 14th March, two sailors,
 at 16 dollars 32 0
 „ To the captain 20 0
 „ From the 14th of March to
 the 3rd August 3 sailors at
 16 dollars each 249 0
 „ To the cook, at twelve dol-
 lars 60 0
 „ To the captain, 5 months at
 20 dollars 100 0

Dollars 1122 0½

Amount paid by order of the
 court 150 0

Twice paid for apprehending a
 negro 26 0

1298 0

1802. Dr. Mr. Salvador Dominici to
 Carlos.

March 20.—For freight of the schooner.

„ 8 empty rum punch. .. dolls. 5 3
 „ 6 full puncheons of rum .. 18 0
 April 8.—18 casks of sugar, at 4
 dollars 72 0
 „ 2 casks of rum 6 0
 „ 12.—2 empty rum puncheons 2 0
 „ 22.—2 bags of Manioc flour 1 3
 „ 1 barrel of lamp oil 1 0

Dollars 105 6⁰⁰.

1802. Debtor, Don Francisco Gabriel.

May 24.—To expences on a
 cask of earthenware .. dolls. 3 0
 „ To ditto, on 3 trunks 3 0
 „ To ditto, on a case 0 3
 „ To ditto, on a small bale .. 0 3

Dollars 6 6

1802. Debtor, Monsieur de Fadatti.

March 8.—To expenses on a
 cask of salt cod dollars 3 0
 „ To 1 tierce of rice 2 0
 „ To 2 thousand boards 24 0
 „ To 2 packages of essences .. 2 0
 „ To sundry articles 1 0

Dollars 32 0

1802. Debtor, Monsieur Monnereau.

June 1.—To freight of a cask
 of salt cod Dollars 4 0

1802. Debtor, Monsieur Penne.

June 10.—To freight of a cask
 of salt cod dollars 4 0

1802. Debtor, Jean Pietri.

July 20.—To freight of 6 casks
 of sugar, at 4 dollars dr. .. 24 0

1802. Debtor, Mons. Michael Pietri, for
 freight of the schooner belonging to
 Carlos.

May 26.—To 4 casks of rum 12 0
 „ To 2 ditto 6 0
 June 20.—To 20 negroes 10 0
 „ To 1 cask of salt cod 4 0
 „ To 1 tierce of rice 2 0
 „ To 1 cask of wine 2 0
 „ To 1 barrel of beef 0 6
 26.—To 14 hhds. of sugar 56 0
 „ To 2 empty casks 1 3
 July 14.—To 2 thousand boards 12 0
 „ To 2 thousand 8 bundles of
 hoops 1 0
 „ To 1 cask of salt cod 4 0
 „ To 1 barrel of beef 0 6
 „ To 6 negroes 3 0
 „ To 16 hhds. of sugar, at 4
 dollars 64 0

178 6

1802. Debtor, Mr. Francisco Farfan,
freight of the schooner.

March 20.—To 9 empty casks	6	0
April 2.—To 7 empty ditto	4	6
„ To 1 cask of salt cod	3	0
„ 22.—To 8 empty casks	8	0
May 6.—To 9 ditto	6	0
„ To 4 negroes	2	0
9.—To 26 hhds. of sugar	104	0
12.—To 1 cask of treacle	4	0
„ To a carriage	8	0

145 6

1802. Debtor, Mr. Destray and widow
Tallemon.

April 12.—To freight of a cask of salt cod	dollars	4	0
„ To ditto of a tierce of rice		2	0
„ To ditto of 6 barrel of biscuit, at 6 rials		4	0
„ To ditto of 3 casks of treacle		3	0
22.—To ditto of 8 hhds. of sugar		32	0
„ To ditto of 28 barrels of ditto		28	0
„ To ditto of 4 casks of treacle, at 4 dollars		16	0
„ To ditto of 14 empty casks at 1 dollar each		14	0
„ To ditto of 4 mules, at 4 dol- lars each		16	0
30.—To ditto of 14 hhds. of sugar		56	0
„ To ditto of 3 casks of treacle, at 4 dollars		12	0
July 1.—To ditto of 1 tierce of rice		2	0
„ To ditto of 6 hhds. of treacle		24	0
„ To ditto of 5 new negroes		2	4½
14.—To ditto of 3 empty casks		2	0
20.—To freight of sundry sugar and treacle		86	0

303 4½

„ To freight of 3,000 boards | 24 | 0 |

Dollars 327 4½

Creditor, to one cask of sugar
wetted | 65 | 0 |

Dollars 262 4½

1802. Debtor, Mr. Eccles.

March 20.—To freight of 5 casks rum	dollars	15	0
April 22.—To ditto of 5 ditto		15	0

Dollars 30 0

Freights paid in cash.

To passage-money of Mr. Ant. Basilico with 2 ladies, dolls.		4	0
--	--	---	---

Freight of sundry articles	26	7
Ditto received of 16 hhds. of sugar	48	0

Dollars 78 7

To amount due from Salvador Dominici	105	6
To ditto from Don Francisco Gabriel	6	6
To ditto from Mr. Fadalli	32	0
To ditto from Mr. Monnereau	4	0
To ditto from Mr. Penne	4	0
To ditto from Mr. Jean Pietri	24	0
To ditto from Mr. Michael Pietri	178	6
To ditto from Mr. Farfan	145	6
To ditto from Mr. Deshay and Widow Tallemon	262	4½
To ditto from Mr. Eccles	15	0
To ditto from ditto	15	0

871 8½

Received in silver or said
amount, as per account in court 995 | 3 |

1867 2½

To be deducted, the amount of
charges as per aforesaid ac-
count, being for articles of the
first and absolute necessity 1298 | 0½ |

569 2

I declare the foregoing account to be
a true one, errors excepted, and make
oath to the same. Port of Spain, 12th
August, 1802.

(Signed) MIGUEL PIETRY.

Don Miguel Pietry will answer for the
65 dollars deducted from the sailors for
the loss of 1 hhd. of sugar, he therefore
is answerable for dollars, 634. 2.

(Signed) MIGUEL PIETRY.

To his Excellency the Governor General:

Don Miguel Pietry of this place, depo-
sitory of the effects of Carlos Gonzalez,
do appear in due and legal form before
your honor, and represent to you, that I
now make solemn presentation of the ac-
count and management of the schooner,
expressing the charges and dates thereof;
and as it appears by the same, I am in-
debted in the sum of six hundred and
thirty-four hard dollars and two rials,
which sum I am ready to pay in, deduct-
ing what justly belongs to me as deposi-
tory, for my usual gratuity. I request
your excellency may be pleased to order
the same to be settled; and on my deli-
very of these effects or funds to the wife
of Carlos, should you be thus pleased to
determine, to hold me as exonerated and
released from any responsibility: I re-
quest your excellency will thus decree
and order, the same being justice, and I
swear the needful, &c.

(Signed) MIGUEL PIETRY.

"Grant the perusal thereof to the wife of Gonzalez." (Signed) TH. PICTON.

His excellency the governor-general thus decreed, and he signed thereto in the Port of Spain, on the *nineteenth day of August*, in the year one thousand eight hundred and two, which I attest.

Before me FRANCISCO DE CASTRO.

I notified the foregoing to the petitioner, which I attest.

(Signed) CASTRO.

I served the copy.

(Signed) CASTRO.

To the Governor General :

Juana Talavera, the lawful wife of Carlos Gonzalez, of this place, do appear in due and legal form, and represent to you, that whereas I have had delivered to me the account of the disbursements incurred by the schooner that was attached, and which said account was presented by the depository Don Miguel Pietry; notwithstanding its being my earnest wish to terminate this matter, it is absolutely incumbent on me to represent to your excellency such remarks as offer themselves to me, and as is my duty to observe relative to the said account; Firstly, that the same is not accompanied with any voucher to prove the sundry items charged therein; Secondly, that Don Miguel Pietry ought to have attended to what was solicited by me, which was, that such slight repairs only should be done, as would render the vessel fit to navigate in this gulf, and not such considerable repairs as would render her fit to undertake a voyage to Europe, as the charge and expenses of leaving her down nearly amount to 900 hard dollars, which was the sum the said schooner cost; and this ought not to have been done by the said Pietry without being authorized for that purpose by the court, to whom he ought to have stated what was requisite to be laid out on the said vessel; and had I known and been acquainted of the same being so exorbitant, I should immediately have petitioned for said vessel to have been sold in its then actual state, that so considerable a prejudice might have been avoided, that has been incurred by the voluntary act of the depository.

I also observe, that the price of the boat is something more than its estimated value; and that the cable for the anchor is charged at 53 dolls. 1 rial, and the appraiser states it to be an old one; it therefore cannot be worth this sum. I also observe, that there are thirty-eight days' work of caulkers charged in the said account at two dollars per day's work, making 76 dollars. It appears to me that to

careen and caulk a vessel so small as the schooner is, it never could have taken one month and eight days, especially as she was not caulked below the water-line. In like manner, it is worthy of remark, that the sailors' wages, in all other vessels, are 14 dollars per month; the wages are charged at 16 dollars; and, lastly, the prices of the provisions and other articles purchased by the depository appear to be very high, and dearer than the prices the same are usually sold at; but above every thing else, and is highly remarkable and surprising is, that the freights that were earned by the vessel are, per said account, either owing or agreed for on credit, to and with the shippers. He the depository has not as yet recovered them to defray the charges, and he ought not to have touched the money in deposit without a legal order. In pursuance hereof, I request your excellency that you will be pleased, on sight of the said account, and the remarks so justly made by me, to order the depository to exhibit the money that was deposited with him; and for him to recover the freights that are due to pay the said charges that have been incurred by said schooner, as stated in the said account, which your excellency will previously cause to be investigated by two competent persons, in the confidence of the court, that the same may be regulated and settled in a fair and just manner. I therefore request your excellency will thus order and decree, the same being justice that I require, &c.

(Signed) JUANA TALAVERA.

"Their honors, the judges, to decide hereon." (Signed) TH. PICTON.

His excellency the governor and captain-general of this island of Trinidad thus decreed, and he signed thereto on the *thirteenth day of September*, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

The usual and customary forms having been duly observed, I delivered these acts to his honor the ordinary judge of the second election, which I attest.

(Signed) CASTRO.

To his Honor the Judge of the second Election :

Juana Talavera, of this city, do in due and legal form appear before your honor, and represent to you, that the schooner and attachment having been put up at a public sale, when no person whatever appeared as a bidder, and on this day there has presented himself Don Miguel Pietry, and has offered for said schooner one thousand two hundred hard dollars, to be paid at three months' credit, which said proposal I have accepted, provided the same meets with your ap-

probation; and I request you will order Don Pedro Ruiz, to whom the amount of the mulct or fine is to be paid, may wait the said time for his said payment, by reason that I have no other means of doing it than as aforesaid. I therefore request your honor will decree and pronounce accordingly, the same being justice that I require, and I swear, &c.

(Signed) JUANA TALAVERA.

Serve the copy. (Signed) BLACK.

His honor the judge of the second election, thus pronounced and decreed, on the *sixteenth day of September*, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I immediately notified the same to the petitioner. (Signed) CASTRO.

I served the copy.

(Signed) CASTRO:

To his Excellency, the Governor and Captain General:

Don Pedro Ruiz, residing in this Port of Spain, with the greatest respect beg leave to represent to your excellency, that in consequence of this cause being terminated and the defendant bailed, and for his release from prison he, said defendant, having named as his security Don Miguel Pietri, of this city, who signed the bond or voucher for that purpose, to pay the amount of the said robbery. I therefore request your excellency will be pleased to order the said money to be paid me immediately as I am much in want thereof; for, up to this moment, the parties are deaf to my applications. I hope your excellency will order accordingly, the same being justice that I implore at your hands. I petition and swear that this petition has no sinister intent. Port of Spain, Sept. 16th. 1802.

(Signed) PEDRO RUIZ.

As requested, with monition or notice to be served. (Signed) TH. PICTON.

His excellency the governor and captain-general of this island of Trinidad thus pronounced, and signed thereto, on the *sixteenth day of September*, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I immediately notified it to the petitioner. (Signed) CASTRO.

To his Honor, the ordinary Judge of the second Election:

Don Pedro Ruiz, residing in this Port of Spain, do, in due and legal form, appear (and as may best avail) before your honor, and represent to you, that in pursuance of the memorial or petition presented on the seventeenth of the present month, suing and claiming from the per-

son of Don Miguel Pietri, of this place, and by virtue of the decree of his excellency, the governor and captain-general, that I should be paid the said money, for with respect to me there can be no appeal whatever, as the person who is and ought to pay the same is the aforesaid.

Furthermore, having much wanted this money for so long a space of time, much against my inclination, from the crime of another, it is but justice that I should now be fully paid.

I therefore request and implore your honor will be pleased to pronounce and decree the same to be paid me, as being legally and justly due to me; and I swear that this does not proceed from any sinister motive.—Port of Spain, 17th of September, 1802.

(Signed) PEDRO RUIZ.

Acts perused: In consideration thereof the decree must be enforced, as pronounced yesterday by his excellency the governor and captain-general, by notifying to Don Miguel Pietri, to pay the sum demanded by the plaintiff, within the term of three days, under pain of notice of execution. (Signed) BLACK.

His honor, the ordinary judge of the second election of this island of Trinidad, thus decreed, and signed thereto, on the *seventeenth day of September*, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I notified the same to the petitioner. (Signed) CASTRO.

On the *eighteenth day of the said month and year*, I notified the foregoing decree to Don Miguel Pietri.

(Signed) CASTRO.

To his Excellency the Governor and Captain General:

Don Pedro Ruiz, residing in this Port of Spain, with the greatest respect beg leave to represent to your excellency, that in consequence of my having legally applied to the Court, and which immediately decreed and ordered the said amount to be paid me, on giving notice thereof to Don Miguel Pietri, as bondsman and security, who has neither obeyed or paid any attention to the order which your excellency decreed, should be enforced by law: furthermore, I have addressed myself to his honor, the judge of the second election, who decreed in like manner; but I find that every thing is about to be misapplied. I request and implore that your excellency may be pleased to order that Don Miguel Pietri, as I have before expressed, be forthwith have sentence of judgment pronounced against him, according to law; unless he imme-

diately pays the said amount ; and I claim all costs. I request your excellency may be pleased to decree accordingly ; it being justice that I implore from you ; and I make oath of not having any sinister intent.—Port of Spain, on the 28th September, 1802.

(Signed) PEDRO RUIZ.

“ As requested.”

(Signed) TH. PICTON.

His excellency, the governor-general of this island of Trinidad, thus decreed, and he signed thereto, in this Port of Spain, on the *twenty-eighth of September*, in the year one thousand eight hundred and two, which I attest.

Before me FRANCISCO DE CASTRO.

I notified the same to the petitioner, which I attest. (Signed) CASTRO.

An order for execution was issued, which I attest. (Signed) CASTRO.

To his Honor the Judge of the second Election :

Don Miguel Pietry, merchant of this city, do, in due and legal form, appear before your honor, and represent to you, that the notary in this cause having notified to me a decree, by virtue of which I am ordered to pay Don Pedro Ruiz one thousand eight hundred dollars ; in which sum Carlos Gonzalez was condemned, and on whose behalf I was bound ; but this engagement was entered into by me, in consequence of his effects being attached ; I therefore hope your justice will induce your honor to direct the said property to be put up at public auction, and sold to the highest bidder ; and when this shall be accomplished, should the said effects not be sufficient to discharge this debt, I will then readily pay or make good whatever deficiency may result. I therefore request your honor will pronounce and decree accordingly the same being justice, and I swear I have no sinister intent, and the needful, &c. (Signed) MIGUEL PIETRY.

As requested. (Signed) BLACK.

It was thus pronounced and decreed by his honor the judge of the second election of this island of Trinidad, who signed thereto on the *thirtieth of September*, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I notified the same to the petitioner, which I attest. (Signed) CASTRO.

I afterwards notified the same to Juana Talavera, which I attest.

(Signed) CASTRO.

To his Honor the Judge of the second Election :

Don Miguel Pietry, of this city, and bondsman for Carlos Gonzalez for the payment of the sum of one thousand eight hundred hard dollars to Pedro Ruiz, due to him from the said Carlos Gonzalez, do, in due and legal form, appear before your honor, and represent to you, that towards the payment of the aforesaid sum, a negro, named John Wasuma, has to pay sixty-six Portugal pieces, who was the herdsman and had the care of the cattle belonging to the said Carlos Gonzalez, that were kept in the Savanna or meadows ; said sum arising from sundry animals or beasts sold by him, and who, the day before yesterday, delivered me an account stating the said sum to be the produce thereof, at the same time promising me to pay the same within a short space of time, or that he would otherwise provide a bondsman ; and he not having done either the one or the other, but instead thereof, he has absented himself from this Port, and departed into the country ; I therefore request from the justice of your honor, that you may be pleased to order one of the officers of your court to go in quest of the said Juan, and bring him into court without the least delay, in consequence of the motives hereinbefore expressed, and my being apprehensive that he may get towards the coast, and withdraw himself to the continent, having been acquainted that he is a fugitive slave. I therefore request your honor to pronounce and decree accordingly, the same being justice that I implore, and I swear the needful, &c.

(Signed) MIGUEL PIETRY.

As requested. (Signed) BLACK.

His honor the judge of the second election thus decreed, and he signed thereto in the Port of Spain, on the *first of October*, in the year one thousand eight hundred and two, which I attest.

Before me FRANCISCO DE CASTRO.

On the same day, I notified the said decree to the petitioner, which I attest. (Signed) CASTRO.

On the *twenty-first day of October*, in the said year, Don Miguel Pietry personally appeared in the court of his honor the judge of the second election, who, in my presence, paid to Pedro Ruiz one thousand eight hundred hard dollars, eight hundred thereof in cash, and the remaining thousand in a bill to his order, payable in two months from this date ; and the said Ruiz acknowledged

himself paid to his own satisfaction, and he signed hereto, which I attest.

(Signed) PEDRO RUIZ.

(Signed) CASTRO.

On the aforesaid day, there personally appeared, in the presence of me the notary, Don Miguel Pietry and Juana Talavera; and the former declared that he had taken charge of the schooner specified in these acts, for and in consideration of the sum of one thousand and twenty-five hard dollars; and the said Talavera accepted the said offer and sale, and they signed hereto, which I attest.

(Signed) MIGUEL PIETRY.

(Signed) CASTRO.

(Signed) JUANA TALAVERA.

To his Honor the Judge of the second Election:

Juana Talavera, of this city, the lawful wife of Carlos Gonzalez, do in due and legal form appear before your honor, and represent to you, that there were under the charge of Juan Francisco a man of colour, twenty-one animals, consisting of mules, horses, and horned cattle, of which there do not at the present time exist any one, in consequence of an attachment having been laid thereon, in the course of the criminal cause that has been prosecuted against my said husband; in pursuance whereof, I request your honor may be pleased to order him to pay the value of said cattle, as it is proved by these acts, that the said cattle were in being, and existed in manner as aforesaid, in his keeping; for towards the payment of the costs in the said criminal cause, I am without means to discharge the same; and whereas the said Juan Francisco is supposed to possess some effects, your honor will be pleased to decree that the same may be sold at public sale, with all possible dispatch, I therefore request your honor may be pleased to decree accordingly, the same being justice; and I also request being allowed the costs, &c.; and I swear the needful, &c.

(Signed) JUANA TALAVERA:

The party must produce evidence thereof, and for this purpose the summary examination of witnesses must be taken, who may have any knowledge of the transaction, and justice shall be administered in due course, and commission is hereby conferred on the notary to do the needful. (Signed) BLACK.

His honor the judge of the second election thus decreed, and he signed thereto in the Port of Spain, on the *eighth day of November*, in the year one thousand eight hundred and two, which I attest.

Before me FRANCISCO DE CASTRO.

Immediately afterwards, I notified the same to the petitioner, which I attest.

(Signed) CASTRO.

In the Port of Spain, on the *eighth day of November*, in the year one thousand eight hundred and two, Juana Talavera, produced as a witness (in support of the case she means to establish, and in pursuance of the decree aforesaid) Josef Antonio de los Reyes, to whom, by virtue of the commission conferred on me the notary, I administered the oath in due form, on God our Lord, and on the sign of the Cross, and thereon he promised to relate the truth respecting the aforesaid particulars specified in the petition, which were duly communicated to him: he thereupon deposed, that some considerable time back Carlos Gonzalez delivered to him, the deponent, two cows and a calf, and afterwards a bay mule, to be conveyed by him, and delivered into the care of Juan Francisco a negro, which he accordingly performed; and the aforesaid negro, in the presence of him the deponent, marked the same with Carlos's mark, they being then together in the meadow where the said negro turned them loose; that some time afterwards, he, the deponent, being one day in conversation with Juana Talavera, the wife of said Gonzalez, the said Juan Francisco arrived, when he, the deponent, reminded him of the truth, that he had delivered to him the bay mule, which he Francisco acknowledged; but as the deponent has since heard said Francisco denies the same; that he, the deponent, also knows, from having been an eye-witness thereof, whilst at the meadows, that the said negro Juan Francisco had, at sundry times, conducted thither sundry other cattle belonging to the said Carlos, whose shepherd or herdsman he was, and which said cattle were all marked with Carlos's mark; that the aforesaid is all he knows, and that he can depose relative to the matter in question, and is the truth on his aforesaid oath; that he is more than twenty-five years of age; he did not sign hereto, as he could not write; I have signed hereto, which I attest.

(Signed) FRANCISCO DE CASTRO.

On the same day, and for the purposes aforesaid, Juana Talavera produced as a witness Don Geronimo Bernasas, to whom, by virtue of the commission conferred on me, I administered the oath in due form, on God our Lord and on the sign of the Cross, and thereon he promised to relate the truth to the best of his knowledge, to whatever questions might be put to him; and accordingly, on his being interrogated relative to the particulars of the aforesaid petition, he deposed that he well knew that Carlos

Gonzalez had delivered to Juan Francisco sundry animals; and that he Francisco had never delivered up the marks, tokens, &c. of those which he asserted had died; that the said Francisco, in the presence of him the deponent, had acknowledged being indebted in the sum of sixty-six Portugal pieces for sixteen animals that are deficient, besides two mules out of three that he had to deliver up; that this his deposition is the truth on his aforesaid oath, and which he ratifies and confirms, and will repeat the same at a future time, if required: the foregoing was then read to him, and he deposed, that the same was correctly written and expressed, that he can neither add nor diminish, that he is more than twenty-five years of age, and he signed hereto, which I attest.

(Signed) GERONIMO BERNASAS.

Before me FRANCISCO DE CASTRO.

In continuation, there personally appeared Don Miguel Pietry, to whom I administered the oath in due form, on God our Lord, and on the sign of the Cross; and thereon he promised to relate the truth, to the best of his knowledge, to whatever questions might be put to him; and on his being interrogated respecting the contents of the foregoing petition, and the same having been duly communicated to him, he deposed, that in the presence of me the notary, and of himself the deponent, the negro Juan Francisco had acknowledged himself responsible for sixteen beasts that had been delivered to him by Carlos Gonzalez; and that from his not producing them, or the tokens belonging to them, as is usual and customary, and to acquit himself thereof, he bound himself to pay the sum of sixty-six Portugal pieces for the value thereof, and besides two mules out of three that were to be delivered by him; that the foregoing is the truth on his said oath; that he is more than twenty-five years of age, and he signed hereto, which I attest.

(Signed) MIGUEL PIETRY.

Before me FRANCISCO DE CASTRO.

Thereupon personally appeared Juana Talavera, who declared, that for the present she did not mean to avail herself of any more witnesses.

(Signed) CASTRO.

I delivered these acts into court.

(Signed) CASTRO.

Perused in pursuance of the evidence brought forward by Juana Talavera. There must be disposed of by public sale, the trifling or few effects that have been attached as the property of the negro Juan Francisco, in consequence of its being proved his having acknowledged

himself to being indebted to Carlos Gonzalez, the sum of sixty-six Portugal pieces, the produce of sixteen beasts that were put under his care in the meadow (de los Pozos) of the wells; and with the view of avoiding further costs in this procrastinated cause, an official order must be transmitted to the chief person in authority at the said meadows, for him to deliver over, at the disposal of this Court, the effects that have been attached there belonging to the aforesaid Juan, deferring for the present pronouncing, with regard to the said negro, whether he is a slave or not, as has been stated by Don Miguel Pietry in his memorial or petition of the first day of October last. (Signed) JUAN BLACK.

His honor the ordinary judge of the second election of this island of Trinidad, thus decreed, and signed thereto in the Port of Spain, on the *ninth day of November*, in the year one thousand eight hundred and two.

Before me FRANCISCO DE CASTRO.

I notified the foregoing to Juana Talavera. (Signed) CASTRO.

The same notification I also made to Don Miguel Pietry.

(Signed) CASTRO.

On the *eighteenth day of November*, in the aforesaid year, there were judicially sold at public sale, by order of his honor the judge, three horses that had been attached, belonging to Juan Francisco, a debtor of the sum of sixty-six Portugal pieces, to Carlos Gonzalez, which were purchased in manner as follows: two by Don Miguel Pietry, for forty-four Portugal pieces; and the other was purchased by Don Juan Pene, for twenty-two ditto; both which sums amount to sixty-six. (Signed) CASTRO.

By virtue of these presents, I Juana Talavera, the lawful wife of Carlos Gonzalez, and with the express permission of my said husband, do hereby bind myself, with my effects, both actually in possession, or that may be at a future time, that in case the money and other effects deposited in the hands of Don Miguel Pietry, should not be sufficient to make good the sum of one thousand eight hundred hard dollars, with the costs in which my said husband was condemned, in the suit with Pedro Ruiz, I engage to pay and make good the same out of my own property, whatever amount may be deficient to complete the said sums; and as the aforesaid Dn. Miguel Pietry has given security and bailed my aforesaid husband, and has made himself responsible for the sum in which my said husband was condemned; and that

at no time whatever the slightest prejudice may be incurred by said Pietry, I grant these presents, in the Port of Spain, on the *seventh day of August*, in the year one thousand eight hundred and two. The witnesses hereto were Don DIEGO ANTONIO DE ALCALA, and Don GERONIMO BERNASA, residing herein, who were present.

(Signed) JUANA TALAVERA.

To his Honor the Judge of the second Election :

Don Miguel Pietry, merchant in this place, do in due and legal form appear before your honor, and represent to you, that in the criminal cause that was prosecuted against Carlos Gonzalez, I was appointed depository of his effects, and after sentence was pronounced, I became his bondsman for the due and strict compliance with the terms of the said sentence and payment of one thousand eight hundred dollars, as has been paid by me, and voucher thereof appears in the acts; but whereas, at the present time, there do not remain in my possession any effects whatever belonging to the said Carlos, and there still remain the costs to be paid; and to the intent that no prejudice whatever may fall on me, in consequence of the aforesaid bond entered into, I now, in full and solemn form, exhibit the document granted in my favour by Juana Talavera, the lawful wife of the said Carlos, by which she binds herself, with her effects, to make good whatever might be deficient towards the full payment of the said costs; and whereas the said Juana Talavera is ready to depart from this island, I request your honor will in justice be pleased to order (on the costs of the suit being taxed) the said Juana to discharge the same, causing it to be intimated to her not to depart without payment thereof, depositing for this purpose equivalent effects, that I may be pronounced exonerated and discharged from the bond, having already fulfilled my part; I therefore request your honor may pronounce and decree accordingly, the same being justice that I solicit; and I make oath to have no sinister motive, also the needful, &c.

(Signed) MIGUEL PIETRY.

Let Juana Talavera be notified not to depart from this island without terminating the suit pending, which the party refers to.

(Signed) BLACK.

His honor the ordinary judge of the second election of this island of Trinidad, thus decreed and signed hereto, on the *eighteenth day of November*, in the year one thousand eight hundred and two,

Before me FRANCISCO DE CASTRO.

I notified the same to the petitioner.

(Signed) CASTRO.

At the same time, I notified the same to Juana Talavera whilst in the hall of my office.

(Signed)

CASTRO.

I delivered these acts to be officially taxed.

(Signed)

CASTRO.

Taxation.

The Judge	32
To the Deputy of the High Constable	8
To the Constable Manuel, two services	8
To the Drummer	36
To the Common Crier	8
To appraising the Cordage and Rigging	18
To the two Caulkers in Halves	36
To the Notary Don Francisco de Castro	220

366

To the Petitions or Memorials of Juana	90
Ditto of Pietri	45
Ditto of Ruiz	27
To Charge of Taxation hereof	54
Total, five hundred and eighty-two Rials	582

Port of Spain, on the *23rd day of November*, 1802.

B^o. DE GONZALEZ.

To the Officer Manuel, for two days

Attendance

60

To the Officer Rafael, for five ditto ..

150

210

EXHIBIT C.

[Vide antè p. 248.]

Before the Honourable Court of King's Bench.

THE KING

against

THOMAS PICTON, Esq.

Don Francisco de Castro, president of the illustrious municipality of this island of Trinidad, and likewise royal notary public to the government thereof, deposes on his oath, that during the examination he underwent as a witness in this prosecution, on the twelfth day of this present month of January, before the most illustrious brigadier-general Don Thomas Hislop, lieutenant-governor of this said island, to whom was addressed the order for the examination of witnesses residing in this island of Trinidad, relative to the sundry matters on which the accusations are founded, he was so much oppressed and influenced by sundry weighty and well-founded motives,

that it prevented him, at that time, from relating the truth of the past occurrences, that is to say, as far as the extent of his knowledge could have permitted him; he perceiving that his total ruin would ensue and be caused by persons residing in this island. The deponent, well knowing that he has not declared the whole truth in his answers to the questions that were put to him by the counsel on the behalf of the accused, he immediately as the court closed, which was on the said twelfth day of January, protested against his said answers to the questions that were put to him; also against his aforesaid evidence, given under such fears and apprehensions; and he the deponent swears, and farther declares, that he verily believes that his discovering and relating the truth before any court in this said island, in a strictly true and conscientious manner, and as he ought, and as is his wish to do, as a man of sincerity, would insure his loss of those effects he has hitherto acquired, and might also endanger his personal liberty: That he finds that notwithstanding his honor the lieutenant-governor is ever ready to render justice to all the world, as well to the persons who are parties in this prosecution as also to all others under his government; he may still not have it in his power to shield him from the ruin he might be involved in from the subtilty of some men and whom it might be equally dangerous for him, the deponent, to point out; and from whom he apprehends these dangers, should he explain the motives on which his fears are founded: but he is nevertheless ready to appear before the honorable Court in Europe, whenever process or trial takes place of this prosecution; and he will then readily before the Court give his evidence, and declare the truth to the best of his knowledge, as a man of probity and conscience ought to do, and which he is anxious to do under the protection of the said honorable Court, and to explain the motives of his fears, and the names of the persons who are now meditating his ruin, should he, the deponent, make a deposition contrary to their wishes.—Port of Spain, 21st January, 1805.

(Signed) FRANCISCO DE CASTRO.

Sworn before me in court,
this 22nd of January,
In the year of our Lord, 1805.
T. HISLOP.

EXHIBIT D.

[Vide *antè* p. 254.]

To facilitate him (Castro) to make his deposition in the cause of Luisa Calderon,

he claims the protection of your excellency, and should he be set at liberty, he requires:

There may be given him a copy of his declaration, for the greater regularity.

That on giving him a copy of the questions, he will reply thereto in his own hand-writing, taking them first to his own house to enable him to consider and well digest his answers, without inserting any superfluous matter.

That he shall not be obliged to answer any questions that may injure himself by his answers; his intention not being in any way to prejudice himself.

That he enjoys the office of president of the municipality, by reason that his dismissal from that office has not as yet been notified to him; and that the same is his property, having purchased it with his money; and by the capitulation he was continued in it, and his excellency has been wrong informed.

EXHIBIT E.

[Vide *antè* p. 308.]

Examination and report made on oath relative to the registers delivered by the beneficed curate Don Josef Maria Angeles to the Court of Session; said examination and report made by the beneficed priest Don Pedro Josef Reyes Bravo vicar, with set jurisdiction out of the ecclesiastical court, and is ecclesiastical judge, in this windward island of Trinidad; by order of his excellency the lieutenant-governor and brigadier-general Don Thomas Hislop.

Observation 1st.—The curate, Don Josef Maria Angeles, has delivered to the Court, the first register-book kept by him from the time of his appointment as curate of the New Colonists in Port of Spain; that is to say, from the year 1784: This Register-book is titled volume 1st, and is divided into two books, Book the first and Book the Second.

2nd.—In the title of book the 1st is found written, in the actual hand-writing of father Don Joseph Maria Angeles, "This book contains in all 88 leaves to serve, or written on, without comprising this and the last, which is to have written thereon the certificate of its completion, one marked numerically, as may be seen in its place as aforesaid.

3rd.—At the end of December in the year 89, which reaches to the end of fo. 88, is further written, in the hand-writing of the said curate Angeles, "Finis."

4th.—There is written on the 89th leaf, or fo. 89, which had remained as a

blank leaf, intended for the certificate, two entries of baptisms, written in the hand-writing of the curate Angeles; the first thereof with ink of an old appearance, and the second entry, which is that of Luisa, is written with ink of more and very modern appearance; and the figures that are placed to denote the number or folio 89 are in the same ink as the entry.

5th.—It is observed, at fo. 88 of book 1st, and at the end of December 1789, there is inserted the word "Finis," which means, conclusion of book No. 1: and afterwards there is a baptismal entry, inserted by the curate Angeles with the ink of old or long date, and between the word "Finis" and this entry, is observed, interlined, the words "Entries omitted," written with fresh ink.

6th.—At the end of the baptismal entry, inserted on the blank leaf titled fo. 89, are observed the following words, written in the actual hand-writing of the curate Angeles, "*Certificate granted to her;*" which words have been since struck out by him; but they can still be distinctly read. It is to be observed, that the said certificate could not have been granted to Luisa by the curate Angeles on the day of her baptism; for the said entry states, that the ceremony of baptism was performed by the father assistant curate Aneses; neither could he have granted it at the end of the year 1789, when he says it was entered or noted in the register, for it is manifest that a child of about 16 months old, a little more or less, had not the means or power to require it: and it is to be observed, that there is no other baptismal entry, among all these, fully entered in the Register with these words inserted at the end.

7th.—The baptismal entry of Luisa, inserted in the Register by the father curate Angeles, states her to have been born on the 25th August, in the year 1788; and that she was baptized by father Aneses, at that time chief assistant curate in the church, on the 11th day of September, 1788.

8th.—At folio 59, in the Register's court, and at the exact period of September 1788, is made a small note or memorandum, in the actual hand-writing of the father curate Angeles, written with the same fresh ink as the entry of Luisa Calderon at fo. 89, which small N. B. says "Luisa; See fo. 89."

9th.—It is observed, that at the end of December 1789, which is also the end of book the 1st of the said Register, there also are written, in the actual hand-writing of the curate Angeles, 28 baptismal entries, under the title of Entries omitted; which entries are written with

ink of long date, although the title thereof is written with fresh ink; and immediately succeeding the said entries, is to be found as aforesaid the word "Finis."

10th.—Among the whole of the certificates or baptismal entries omitted, and which are inserted at the end of 89, under his control, to the number 31, there are only 3 to be met with that were solemnized by the father curate Aneses, as is ascertained by the tenor thereof.

11th.—Among the whole of the baptisms regularly entered in the register of the year 1788, it is observed that there are only four to be met with solemnized by the father Aneses, and that one of them was the baptism of the son of a female slave of the said father Angeles.

12th.—There is observed, at the end of December in the year 1788, at fo. 64 of book 1st of the Register, a recapitulation written in the hand-writing of the father curate Angeles, which says, that the baptisms that have been solemnized during or in the course of the year 1788, amount in the whole to 264. This summary or brief recapitulation indicates that at the end of each year, previous to any insertions in the year ensuing, he inspected his register; and it is natural to conclude, that previous to closing the year by such recapitulation, that this was the time for him to insert in this register the memorandums of the baptismal entries that had been omitted during that year.

13th.—It is to be observed, that the first register delivered by the father Angeles, and in which is met with the baptism of Luisa, begins in the year 1784, being the time of his appointment to the curacy of the Port of Spain; and that the said register reaches no further than the end of July, 1795. And it appears, that the said register has been unsewed and taken to pieces; for from the capaciousness or size of the outside binding or parchment cover, an apparent deficiency is evident; which circumstance, added to what has been before stated, determined me to request his excellency and the court, that, for the better investigation and ascertaining the truth in the cause, the father curate Don Josef Maria Angeles should be ordered to deliver to me the remainder of his register, subsequent to the month of August 1795 until 1805, as also the register of the ancient colonists, by reason that the two curacies were united in the year 1787; which order of his excellency he has avoided complying with, and paid no attention to till a few days ago when, in lieu of the registers required, he only sent these of the ancient colonists, and five sewed books of notes or memorandums of baptisms subsequent to the year 1799 till

May, 1805, which ancient registers and old memorandum books were transmitted to me by the secretary of the court; and these latter ones have been examined in the presence of his excellency and of father Angeles, in court, on the 12th day of May. I had the honour of remarking to your excellency on this same occasion, that the five sewed books delivered in by this priest were not the continuation of the register as required from the month of August, 1795 up to the year 1805; but that they were merely some sewed books of memorandums made at the time of the baptisms, to be immediately afterwards inserted in a regular manner in the register, as is expressly required by the civil and canon laws that govern us; which said laws ordain that the curates should keep the registers in the best order and regularity, by reason that on frequent occasions the life, the property, and the right of inheritance of their parishioners depend thereon.

14th.—The father curate Don Josef Maria Angeles being again commanded by his excellency in court to find and deliver up the continuation of the register (as required from him) from August 1795, has declared that he is ready to make oath that he had not in his possession any other registers than the sewed books of memorandums or notes—than those he has delivered; and that the insects had eaten the sewed books that were the continuation of the register.

15th.—On his being again commanded by his excellency in court to declare the truth, and to deliver up the continuation of the register as had been required of him, after a deal of hesitation and difficulties he went home in search of the new register, which he has exhibited in Court, and which begins on the 1st January 1801; but there are not entered therein any more entries than those of the month of January, 1801, and one of the 2nd of February in the same year in an unfinished state. I have to remark to the Court that the first register delivered to him begins in 1784, which was the time when he entered on the curacy of Port of Spain; that this register was titled by him volume 1st, and that the latter which he has presented he titled volume 2nd: this proves in an incontestable manner, that the continuation 95 to the end of December, 1800, existed in the several sheets of the Register, volume 1st, and that these sewed sheets, or portions of the book, have been maliciously cut out or extracted by him; it not being possible that the insects should have eaten the same, as he has stated, being about five years' registers, without his producing some small remnants or scraps thereof, which naturally would have been left.

16th.—Relative to the assertion of the father curate, Don Josef Maria Angeles, that there does not exist in his possession any other register than those he has delivered, and the sewed sheets of memorandums, I have remarked to the said curate, in the presence of your excellency in court, that there is not to be found either in the registers or in the sewed sheets of memorandums, the original certificate or entry of a baptism which I obtained, dated the 24th of May, 1799, which certified copy was granted by him and authenticated solemnly by his signature as having been copied from his register, which proves by evidence the existence of the continuation of the register from and after the year 1795 until 1800, as the new Register volume 2nd begins in January, 1801, and that he has extracted the latter sheets or parts of the Register volume 1st.

17th.—It is to be observed, that father Angeles has delivered five sewed books of memorandums; and that the said sewed books begin from the commencement of 89 until May, 1805, which proves that he regularly entered the memorandums of the baptisms that were solemnized in his curacy; and that having entered therein the year 1784, it is to be presumed that he pursued the same method from the beginning, and that in consequence he ought to deliver in the same manner his sewed books of notes from the year 1784 until the end of 1788; but instead of this he has denied the existence of the said note or memorandum books.

18th.—Your excellency has ordered me, at the solicitation of the advocate of Luisa, to present or produce in court, as curate of Arima and of Saint Joseph, the registers kept by me in these parishes during the time I have enjoyed the said curacies: I had the honour to present them to your excellency in court, on the 12th May, as also those kept by my predecessors; and have to observe to you, with regard to those registers, that the years follow each other regularly without any intermission of blank leaves between the end of one year and the beginning of another; this being direct contrary to usage, custom, and good faith for any blank spaces to be left in registers without they are filled up with lines to indicate that the same had happened through inadvertence, and to prevent any improper use of the said blank spaces as has been practised by the curate Angeles, with sundry blank spaces in his registers, excepting the one he has availed himself of to introduce the baptism of Luisa: and that if in the registers that have been presented by me to your excellency there has been any cer-

tificates of baptisms omitted, they have been entered in the registers, as is customary and usual, the instant that said omission was discovered, as can be seen. And it is the rule that when the entry of a baptism has been omitted and that it has not been entered in its proper place, no certificate whatever thereof is ever given by the curate to the party interested who may require it, without a memorial being presented to the ecclesiastical judge, or in default of such judge then to the ordinary judges that an examination may be strictly taken of the witnesses and relations who may depose to the truth of the matter previous to the granting any such certificate; and it is my duty to observe to the Court and to your excellency, that if in this case this formality had been observed, as is the rule and is the custom, the disgusting circumstances of this suit would have been avoided, as also the scandal of a minister of our religion so publicly compromising the morality of his ministry.

19th.—It is to be further observed, that by strictly inspecting the memorandum books that were delivered by the curate Angeles up to the date of the same in May 1805, it is evidently seen that the ink that was made use of in the said books in July 1803, which was the time of the departure of Luisa Calderon for London, is the same that was used to insert the entry of the baptism of Luisa on the blank leaf of fo. 89 in the Register at the end of the year 1789; which leaves no doubt whatever but that the whole was contrived at that period of time.

20th.—In this state of my observations relative to the Register afore-mentioned, titled volume 1st, and relative to the sewed books of notes or memorandums, I thought proper, previous to concluding them, to make a general examination of the register of the people of colour of the ancient colonies, combining various circumstances, as well the aspect of Luisa as also the ages of other persons of the district who had assured me of their being a little more or less of the same age. I searched the years preceding that of 1788, and I discovered that in the year 1786, at fol. 158, there was an entry of a female infant called Luisa Antonia daughter of Maria Nunes born, as expressed in the said entry, on the 25th day of August, 1786, being Saint Louis's day, king of France; her godfather and godmother were Juan Santiago, and Luisa Antonio. I assure your excellency that my discovering this entry caused in me a very extraordinary emotion; for excepting the difference of surnames Nunez and Calderon, in every other respect this solemnization of the baptism in 1786, by the reverend father Antonio

Alverado agrees with the register on the blank leaf titled fo. 89; for which reason, and my being certain that among the old Spaniards in Port of Spain there never were any with the surname of Nunez, and that in the city of Cariaco there are of this surname, it came into my mind that perhaps this same Maria Calderon might have formerly called herself Maria Nunez; and accordingly I discovered this was the case, the said Maria having been born in Cariaco, being the daughter of Domingo Nunez, the female slave of Don Francisco Enriques Nunez and of Donna Juana Acosta; that the surname of Calderon she took from a man of that name who obtained her liberty; and that the said Maria was always known at Cariaco by the appellation of Mary Nunez Calderon: this narrative I received from Maria del Rozario Rapala, a native of said Cariaco in the presence of Don Josef Francisco Farfan, the day previous to her embarkation for her own country.

Conclusion.—Your excellency having in court directed me, in quality of ecclesiastical judge, and as the superior of the curate Don Josef Maria Angeles, to minutely inspect the registers and memorandum books produced by him, I have fulfilled, with the greatest exactness, the commission that was conferred on me on the oath that I was sworn; I conclude my opinion with acquainting your excellency that, notwithstanding all the circumstances that obscure the registers and note books submitted to my inspection, and especially in consequence of discovering the entry in the year 1786 in the registers of the antient colonists, it is my duty to declare, and accordingly I do declare, that the certificate of the baptism of Luisa Calderon inserted at fo. 89 of the register by the father curate Don Josef Maria Angeles is false, and of no validity; and that the entry found in the register of the ancient colonists ought to be considered as the true one, unless the said curate Angeles, as parish priest, who ought to have a knowledge of his parishioners, should bring forward persons who themselves may prove circumstances to establish his said entry; and I sign hereto, in this city of St. Joseph de Oruna on the 21st day of May, in the year 1805.

(Signed) The Beneficed Curate PEDRO JOSEF REYES BRAVO.

Sworn to before me, in court,

T. HISLOP, Lt. Gov.

July 22nd, 1805.

EXHIBIT F.

[Vide *antè* p. 311.]

The island of Trinidad having sub-

mitted to his majesty's arms, by virtue of the powers in me vested I hereby appoint you, John Nihell, to be *chief magistrate, chief judge, and auditor*, during his majesty's pleasure, in and over the whole and every part of the said island; and I hereby require and command you to do and execute all things in due manner that shall belong to those different offices agreeable to the instructions and powers which shall by my order be given you by lieut. col. Picton, whom I have appointed governor of the said island, and which instructions and powers shall have the full force as if signed by myself. No provision having been made by the late capitulation for continuing the Spanish form of law in the administration of justice in this island, and that form of law HAVING BEEN CONTINUED solely by my circular letter to the captains of quarters and other magistrates; in order to avoid the confusion which may arise from too strict an adherence to the forms of that law, under an English government, particular directions will be given you in your instructions from colonel Picton, to explain fully my meaning and intention in this particular. And whereas, I have thought it necessary to remove from his office, the late assessor general, and do not think proper to appoint any other person to that office; I hereby direct you to proceed in all civil and CRIMINAL CAUSES without an assessor, however contrary this may be to the Spanish forms of law. And I hereby declare that all sentences thus passed or signed by you, without an assessor, shall have the same force, and must be carried into execution in the same manner as if the same had been signed by an assessor. And whereas several complaints have been made to me of great extortions, and unnecessary accumulations of law proceedings in order to increase the fees of escrivanos, procuradors, and other officers of justice; I hereby charge and command you to pay particular attention to the curtailing and simplifying all law suits, and to bring every process to as speedy a conclusion as the nature of the cause will admit, agreeable to the dictates of your own conscience and judgment, and the instructions which you shall receive from colonel Picton, however contrary to the practice of the tribunal under the former government. And I hereby give you full power and authority to deprive of their employment any escrivano, procurador, or other officer of your tribunal, whenever you find them, or any of them, guilty of extortion, malpractices in their offices, or disobedience of your orders. In civil causes it shall be left to the option of either party to appeal from the sentence of your tribunal to the king and council, provided the

cause in litigation amounts to the value of five hundred pounds sterling. In criminal causes the appeal shall be to the governor, and no sentence shall be executed till approved by him.

Given under my Hand and Seal at Port of Spain, Trinidad, this first day of March, 1797.

(Signed) RA, ABERCROMBY, L. G.
Place of the Seal.

By Command of his Excellency.

(Signed) FREDERICK MAITLAND,
Secretary.

TRINIDAD.—I certify the within to be an extract and true copy of the commission given to me by Sir Ralph Abercromby, which I have in my possession.

JOHN NIHELL,
Chief Justice, 22nd July, 1805.

EXHIBIT G.

[Vide ante p. 311.]

Head Quarters, Trinidad,

1st March, 1797.

Sir;—Lieutenant colonel Maitland having laid before me your letter and paper containing notes relative to the office of chief magistrate, which is continued in you, in consequence of the proclamation issued for the maintenance of the former laws of the colony, until his majesty's pleasure is known:

I have the honor to return you such answers as the occasion calls for, directing you at same time to consider this letter as your sufficient authority for acting according to the directions contained in it. As it has been necessary to remove the person who filled the office of auditor and assessor, and that no proper person can be at present found to succeed him, you will in all civil causes previously convene three of the most intelligent and upright men in the colony, or consult any able lawyer, and having received their opinion upon such points as you want, proceed upon their judgment to give sentence on the case. In criminal cases, an appeal lies to the governor.

With respect to the chief magistrate's salary, I am sensible of the propriety and even necessity of making a just provision on this head; although it is my wish, as much as possible, to reduce fees in general, yet certain limited ones will be authorized: Lieut.-col. Picton will be directed to ascertain the amount of what these may be, and such addition shall be made as is proper. At all events you may rest assured that a competent allowance shall be paid you for your service to

the public. I have the honor to be, sir,
your most obedient humble servant,

(Signed) RA. ABERCROMBY, L. G.
Commander in Chief.

John Nihell, Esq., appointed Alcalde,
and to execute the duty of auditor
for the time being in Trinidad.

TRINIDAD.—I certify the above to be
an exact and true copy of a letter received
from sir Ralph Abercromby, the original
of which is in my possession.

JOHN NIHELL, Chief Justice.

EXHIBIT H.

[Vide *antè* p. 321.]

Don Joseph Maria Angeles, licentiate
in divinity, beneficed priest, and parish
curate, and military chaplain to the new
colonists in the windward island of Trini-
dad, and to the ancient inhabitants of the
port of Spain in the same island :

I certify in the best possible manner,
and that may legally avail, that in the
register book of the baptisms solemnized
by my predecessor, in the parish church
of the Port of Spain, added to my cure
lately or some time back by his Catholic
majesty, there is inserted an entry at
over leaf of fo. twenty six, and numbered
three, whose tenor, faithfully transcribed,
is as follows :

" On the twenty-third day of August,
" in the year one thousand seven hun-
" dred and eighty six, I, father Joseph
" Antonio Alvarado, assistant curate
" of the parish church of the Port of
" Spain, do certify, that in the said pa-
" rish church I solemnly baptised and
" anointed with oil, Santiago, ten days
" old, the son of Donna Maria Ygnacia
" Ravelo; the godfather and godmo-
" ther were, Don Luis Centeno de
" Brito, and Donna Bernarda Joaquina
" Yro, to whom I explained their obli-
" gation and spiritual relationship; and
" that the same may appear, I sign
" hereto and attest the same.

FATHER JOSEPH ANTONIO ALVARADO."

The foregoing is conformable to the
original, from whence I have caused it to
be extracted word for word, and thereto
in every respect I refer myself and that
the same may avail, I grant these pre-
sents at the solicitation of the legitimate
party. Done in the port of Spain, at my
usual place of residence, this day, being
the sixteenth day of August, in the year
one thousand eight hundred, and hereto
sign my name.

Father JOSEPH MARIA ANGELES,
B. P. P. C. & M. C.

EXHIBIT I.

[Vide *antè* p. 324.]

The beneficed priest, Don Pedro Josef
Reyes Bravo, proprietary curate of Santa
Rosa de Arima, curate ad interim of the
city of San Josef de Oruna, and vicar
with set jurisdiction out of the Episcopal
court of this windward Island of Trini-
dad, &c.

I certify, by order of his excellency the
president of the court of session, that, in
one of the parish-books of the Port of
Spain, with a white parchment cover, at
folio eighty-nine, is inserted an entry of
baptism, the tenor of which is as fol-
lows : " Luisa, an infant, natural daugh-
ter of Maria del Rosario Calderon, a na-
tive of Cariaco, in the province of Cu-
mana, on the continent or Terra Firma;
she was born on the twenty-fifth day of
August, in the year one thousand seven
hundred and eighty-eight, and baptised
this day, being the eleventh day of Sep-
tember in the same year, in this rector's
church of the Conception of the Virgin
Mary, being the parish church of the
Port of Spain; the godmother was Luisa
Villega, a free mulatta, in company with
Juan Santiago Bacuba, a free mulatto,
who were duly instructed with their spiri-
tual relationship, and their other duties
contracted on so solemn an occasion;
said infant was, agreeable to the forms
and ceremonies of the Roman ritual,
baptised solemnly by the beneficed priest,
Don Esteban Aneses y Aragon, assistant
curate of the aforesaid parish church, by
my licence and permission, in quality of
military curate and parish rector of the
new colonists, in the windward Island of
Trinidad, and of the ancient inhabitants
of the Port of Spain, by appointment of
his catholic majesty, which I attest.

B^o. JOSEPH MARIA ANGELES."

The foregoing is a copy of the ori-
ginal, from whence I extracted it, and com-
pared it; the same is true and exact, and
in one hand-writing; and it is to be ob-
served, that the said register is become
unbound and unsewed, as also that there
are entered in the said book all the bap-
tisms of whites and people of colour,
both free and slaves; and at the same
time, the words " Dado et certificado a
ella." (or in English) " Certificate grant-
ed to her," are written on a line that is
usually drawn at the conclusion of a sig-
nature, and above there is another line
in the manner as before described and
shown. And that the same may avail, I
sign these presents, referring myself at the
same time to the original, in this Port of
Spain, on the sixteenth day of August,
one thousand eight hundred and five.

(Signed) PEDRO JOSEF REYES BRAVO.

Sworn before me by the vicar-general Pedro Joseph Reyes Bravo, that the above is a true extract, taken by him from the books of Registry of Baptism of the parish of Port of Spain, under the cure of Pedro Joseph Maria Angeles.—In Court, August 16th, 1805.

T. HISLOP, Lieutenant Governor.

EXHIBIT K.

[Vide *antè* p. 324.]

The beneficed priest, Don Pedro Josef Reyes Bravo, proprietary curate of Santa Rosa de Arima, curate ad interim of the city of San Josef de Oruna, and vicar with set jurisdiction out of the episcopal court of this windward Island of Trinidad, &c. &c.

I certify, at the request of his excellency the brigadier-general Don Thomas Hislop, president of the Court of Session, under date of the twenty-second day of July, in the year one thousand eight hundred and five, that in one of the parish-books of the Port of Spain, delivered by father Don Josef Maria Angeles, bound in yellow parchment, wherein are inserted the entries of baptism of the free people of colour, therein is found one at fo. 158, whose tenor is as follows: "On the sixth day of September, in the year one thousand seven hundred and eighty-six, I, father Josef Antonio Albarado, assistant-curate of the parish church of the Port of Spain, do certify that, in the said parish church I solemnly baptised and anointed with holy oil, Luisa Antonia, twelve days old, daughter of Maria Nunez, a free mulatta; the godfather and godmother were Juan Santiago and Luisa Antonio; to whom I expressed their obligation and spiritual relationship: and that the same may avail, I sign hereto, and attest the same.

(Signed) FATHER JOSEF ANTONIO ALBARADO."

The foregoing is an exact copy of the original, and thereto I refer myself, from whence I extracted it, and have compared

it; the same is true and exact, of one same hand-writing and same coloured ink; and it is observed therein, that in the place where it expresses Luisa Antonia, there appears to have been something scratched out, beginning and ending at Luisa Anto; and on the place where the scratching out appears, is written in the same hand-writing, and with the same ink, to the end of the line finishing with "Luisa Anto," and the following line begins "nia," to complete the whole name of Luisa Antonia; and furthermore, in the margin is inserted the name of "Luisa Antonio a female infant" in the same hand-writing and ink; and in the other margin the names of the godfather and godmother, Juan Santiago and Luisa Antonia, which is the usual mode and custom of inserting the entries in the parish-books of the baptisms: and that the same may avail, I sign these presents, in the Port of Spain, on the twenty-second day of July, in the year one thousand eight hundred and five.

(Signed) PEDRO JOSEF REYES BRAVO.

Sworn to before me, by the vicar-general, Pedro Josef Reyes Bravo, that the above is a true extract, taken by him from the books of Registry of Baptism, of the old Inhabitants of this Island of Trinidad, in Port of Spain, under the cure of Padre Josef Maria Angeles.—In Court, August 16th, 1805.

T. HISLOP, Lieutenant Governor.

Upon the return of these Writs of Mandamus in Michaelmas Term 1805, Mr. Forbes, the Defendant's attorney, made an affidavit, that on account of the length of the Return, his Client could not be prepared to go to trial at the Sittings after that term, pursuant to the Prosecutor's notice: and the Court accordingly put off the Trial to Hilary Term following.

The Trial of THOMAS PICTON, Esq. in the Court of King's Bench, Westminster, before the Right Honourable Edward Lord Ellenborough, Lord Chief Justice of the said Court, and a Special Jury, on Monday, February 24; 46 GEO. III. A. D. 1806.

Counsel for the Prosecution.

Mr. Garrow [afterwards a Baron of the Exchequer]:

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Mr. Adam [afterwards Lord Chief Commissioner of the Jury Court of Scotland]:

Mr. Harrison,

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Counsel for the Defendant.

Mr. Dallas [afterwards Lord Chief Justice of the Common Pleas]:

Mr. Lawes:

Mr. Abercrombie.

The Indictment* was opened by Mr. Harrison.

Mr. Garrow.—Gentlemen of the Jury; the task of stating the particulars of this most extraordinary and horrid transaction, was originally confided to much greater abilities than those upon which it has now unfortunately devolved. I feel, however, some consolation in reflecting that the present is a case which (addressed to a British jury in a British Court of Justice) requires no embellishment of eloquence, nor any factitious aid, to impress it upon the minds of those who are to hear and to decide upon it. Unless the facts, clearly and fully substantiated by proof, force from you a reluctant verdict of GUILTY, I have no hesitation in declaring that the defendant ought not to be convicted:—I say “a reluctant verdict of Guilty,” because there is no individual present (not excepting even myself, whose duty it is to conduct the prosecution); who would not rejoice if you could justify yourselves to your consciences and your God, in doubting the truth of this accusation.

The indictment, which has been stated to you by my learned friend Mr. Harrison, alleges, that a representative of our sovereign, and governor of one of our colonial dependencies, who was therefore bound to protect his fellow-subjects, has abused the station to which he was raised, and has disgraced the country to which he belongs, by—what no one in England has heard of, without horror and detestation—inflicting torture upon one of his majesty’s subjects, without the least pretence of law, without the least moral justification, but solely to gratify his tyrannical disposition, by the oppression of the unfortunate and defenceless victim of his cruelty.

Gentlemen, in the year 1797, the island of Trinidad surrendered to his majesty’s forces under the command of the illustrious sir Ralph Abercrombie, whose name must ever be mentioned by Britons with gratitude and admiration. That great man entered into stipulations by which he conceded to the inhabitants of this Spanish settlement, the continuance of their laws and institutions; and he appointed a new governor until his majesty’s pleasure should be known, or, in other words, until the sovereign of Great Britain should have, in his paternal kindness towards this new dependence of his empire, extended to it all the privileges and advantages of English laws.

This colony, prior to its surrender to the

British arms, had been governed by a code of laws, abating very much of the severity of that of Old Spain; and I have the authority of the defendant himself for stating, that, previous to his appointment to the government, the juridical regulations of Trinidad were extremely mild and benignant, and well adapted to the protection of the subject in this remote insular establishment.

The person, whose sufferings form the subject of this day’s inquiry, is a young woman of the name of Luisa Calderon. About the age of ten or eleven years, this young person was seduced by a man of the name of Pedro Ruiz, to live with him as his mistress; and although it may to us in this country appear singular, that she should be in such a situation at that tender period of life, yet in that hot climate where the puberty of females is much accelerated, it is common for them to become mothers at the age of twelve; at that early period they either marry, or enter into a state of concubinage if they cannot form a more honourable connexion. Having been seduced by Ruiz, and living with him as his mistress, it appears most clearly (for I have no desire to keep any part of the case secret), that she was engaged in an intrigue with Carlos Gonzalez, who in the month of December 1801, availing him of the access to the house of Pedro Ruiz, which his connexion with Luisa Calderon afforded, robbed Ruiz of a quantity of dollars which were there deposited. Gonzalez was apprehended, and a suspicion arising that she was acquainted with the circumstances of the robbery, if not an accessory to the crime, she also was taken into custody, and examined before an officer of the laws, equivalent to our magistrate or justice of the peace. In the first instance she denied any knowledge of the transaction; the magistrate felt, that according to the laws of Spain, his functions were nearly at an end; she persisted in her denial, and whether her object in so doing was to protect herself or her friend from injurious consequences it is not at all material to inquire. The magistrate felt that he had no authority to adopt any coercive means in order to procure any confession of her own guilt, or any accusation of Gonzalez; and therefore he resorted to the defendant, who was invested with the supreme authority of the island, to supply the deficiency; and, gentlemen, I shall produce in the hand-writing of general Picton himself, and subscribed with his signature this bloody sentence:

“*Inflict the torture upon Luisa Calderon.*” You will readily believe that there was no great delay in proceeding to obey this order. The unhappy girl when taken to the gaol was told by the judge, that if she would confess all her life should be saved; but unless she did so, she should be put to the torture; that if she suffered the loss of a limb, or should be deprived of life itself, the consequences would be upon her own head, and that he should be

* See it, page 226.

absolved from all blame. In order to impress this admonition upon her mind, two or three young negresses were brought before her in the room where torture was usually applied, who were to undergo the same severities, on a charge of sorcery and witchcraft. Here then, we behold a British governor for the first time introducing torture into a British settlement as a punishment for sorcery and witchcraft, and as the means of extorting confession from a person under accusation.

Notwithstanding all this, the young woman persisted in declaring her innocence, and the punishment was applied which has been improperly called *piqueting*; I say improperly, because *piqueting* is a known military punishment, but this is properly distinguished by the name of *the torture*; indeed it is a libel upon *piqueting* to call the torture inflicted upon Luisa Calderon by the same name. True it is that there is some resemblance between the one practice and the other; in both cases the foot is placed upon a sharp wooden point, but in the former that mercy which always attends the infliction of punishments in this country! has assigned for the sufferer a means of reposing or raising himself by the interior of his arm (a rope being placed round the body, and passing under the arm, so that when fatigued, he can rest upon it) by which the agony to the foot is diminished. Not only for the sake of correctness, but for the sake of humanity, I hope this practice will not receive the appellation of *Piqueting*, but that of *Pictoning*, that it may be described by the most horrid name by which it can be known, and be shunned as a disgrace to human nature.

I will briefly state to you the particulars of the situation of this unhappy creature during the time she was thus exposed to this exercise of cruelty. While her body was supported by the great toe projected on a sharp piece of wood, the wrist of the hand on the opposite side was drawn up by a pulley, so that her whole weight was sustained by the pulley and the spike; and lest she should afford herself any momentary relief by struggling in such a situation, the other hand and foot which were not concerned in the dreadful operation, were tied together behind her. She complained bitterly and requested to be lowered; she was then told that if she would confess she should be let down, and then she said Gonzalez had certainly stolen Ruiz's dollars. Nothing but the incontestible evidence which I have to produce, could make you believe, that this unhappy creature continued for fifty-three or fifty-four minutes in that dreadful state. The time was ascertained by a watch which the magistrate had before him, not from any fear that she might suffer too much, but because there was some notion of a supposed law, that the torture could not be inflicted for more than an hour; and had it not been for the watch, the pleasure of inflicting the punishment might have in-

duced the magistrates and the spectators to have continued it for a longer period than the time supposed to be allowed. She was then lowered, but her confession not being deemed satisfactory, in less than twenty-four hours the torture was again applied. This, gentlemen, is a faithful representation of it [*producing a drawing in colours*], and may give you some notion of the sufferings which a human being in such a situation must have undergone.

It appears to me, that the case which I shall lay before you in support of the prosecution is complete. Our charge is, that governor Picton, abusing his station, has, without reasonable cause or legal justification, inflicted the torture upon this young female. But I understand I am to be told that, although the highest authority in this country could not inflict such a punishment on the meanest individual, yet, that governor Picton was justified by the laws of Spain as they applied to the island of Trinidad. Subject to my lord's correction, however, I state with confidence that if it were written in characters which no man could misunderstand, and which he who runs may read, that the laws of Spain as applicable to Trinidad, permitted, in any given circumstances, the infliction of torture, this would afford no justification to a British governor. Nothing could justify him but the law of imperious necessity, to which we must all submit; he must show that he had no alternative. What was the duty of a man placed in his honorable and important station? It was his duty in the first moment of his government to have impressed on the minds of the people of this new colony a conviction of the perfect security they would acquire, of the abundant advantages they would derive, from the mild, benign, and equitable spirit of British jurisprudence; and, above all, that the moment they were received within the pale of the British government, the torture would be for ever banished from the island.

But I moreover assert, that the defendant cannot make out any pretence of a justification, for there is nothing even in the law of Spain as applicable to Trinidad, by which such a pretence can be supported; and I also have no hesitation in declaring, that even if he could establish a right in some cases to inflict the torture, it would not avail him here; he must make out a case of absolute and irresistible necessity, and show that it was his *bounden duty* to inflict it. He ought to have remembered, that in England torture is unknown, not because the subject has never been discussed, but because it is so abhorrent to all our feelings, to our regard for personal liberty and the fair administration of justice, that it never has been and never can be tolerated here. What is the language of our legal institutions, as they are explained by a learned and elegant writer advertent to this subject?

"The trial by rack is utterly unknown to

"the law of England; though once when the dukes of Exeter and Suffolk, and other ministers of Henry 6th had laid a design to introduce the civil law into this kingdom as the rule of government, for a beginning thereof they erected a rack for torture; which was called in derision the duke of Exeter's Daughter, and still remains in the Tower of London, where it was occasionally used as an engine of state, not of law, more than once in the reign of queen Elizabeth. But when, upon the assassination of Villiers duke of Buckingham by Felton, it was proposed in the privy council to put the assassin to the rack, in order to discover his accomplices; the judges, being consulted, declared unanimously, to their own honor and the honor of the English law, that no such proceeding was allowable by the laws of England."—4 *Bl. Com.* 326.

General Picton should have carried this with him to Trinidad, he should have borne in mind the folly of supposing that an instrument of torture is an instrument to extract truth. The subject has been reduced by a foreign writer (Beccaria, chap. 16), quoted by Mr. Justice Blackstone into the form of a mathematical problem: "The force of the muscles and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime." Nothing indeed can be so absurd and preposterous as the application of this process in the administration of justice. But what are we to say of this man who comes here to defend himself, saying, that he has found a law under which he can obtain shelter, when I tell you that it appears by all the volumes sent from Trinidad, that so far from governor Picton having found torture in daily use under former governors, so far from his being bound by any circumstances of necessity to inflict it, he has all the merit of the invention. Like the duke of Exeter's Daughter, it never had existence until the defendant cursed the island with its introduction.

Gentlemen, that I shall prove this case to you I am most confident, for I have read the depositions, which have been most laboriously collected, and laid before the Court; and if I show that for the first time general Picton, a British governor, erected this instrument of torture, and that with his own hand he wrote the bloody order for its infliction, I set before you a man without the least shadow of defence.

The date of this transaction is removed at some distance. In the opinion of those who were to advise his majesty as to the manner in which the government of this remote island should be managed, it was deemed expedient that commissioners should be sent over, and among the persons appointed to this important situation was colonel Fullerton. Upon the arrival of those commission-

ers, this affair was disclosed to colonel Fullerton, who felt it to be his duty to put it in a train of inquiry; the result of which is, that he has found it necessary to bring this defendant before you, and also to bring before you the unfortunate victim of his tyranny, whom I have this day accidentally seen, in consequence of my being by mistake conducted to a consultation into a room where she was. She will be presented before you, and you will find that she at this moment bears about her the marks of the barbarity of the defendant.

Gentlemen, I shall hear with patience and attention and with as much pleasure as any man what my excellent and learned friend has to offer in behalf of his client; I state the case at present with full confidence in your verdict; I ask nothing from your passions; nothing but justice do I require, and I doubt not, that, at the conclusion of this trial, you will be found to have faithfully discharged your duty.

EVIDENCE FOR THE PROSECUTION.

Luisa Calderon sworn.

Mr. Garrow.—Can you speak English?—A very little, Sir, indeed; I can understand it but very little.

Mr. Sergeant was then sworn as an Interpreter:

Luisa Calderon examined by Mr. Adam.

Were you at Trinidad in the year 1798?—Yes.

Were you acquainted with a person of the name of Pedro Ruiz?—Yes.

Did you live in his house?—Yes, I did.

In what year did you first live in his house?—I do not know in what year.

Were you there in 1799 and 1800?—I cannot say positively that I was.

Were you there at the time Mr. Picton was governor?—Yes.

Do you remember any robbery having been committed in the house of Pedro Ruiz?—Yes.

Who was the person suspected of that robbery?—A person called by the name of Carlos Gonzalez.

Do you remember his having been taken up, and committed for that robbery?—Carlos was taken up for the same thing.

Were you and your mother likewise taken up for that robbery?—Yes, the same night.

Before whom were you carried in the first instance? were you carried before governor Picton?—Yes, before the same governor.

Did he order you to be committed to prison?—Yes, I was sent by his order.

Under what guard were you sent to prison?—Under the guard of three soldiers.

Were you committed to close confinement in prison?—I was sent to the woman's side of the prison, to that part which belongs to the women.

Before you were sent to prison by governor Picton did he say any thing to you?—Governor Picton told me if I did not confess who had taken the money, the hangman Ludovigo was to put his hand upon me.

Mr. Garrow.—That she was to be turned over to the hangman, is that what she means?—

Interpreter.—Yes, it is.

Mr. Adam.—Did he say any thing more to you?—No more, but he sent me to prison.

Do you know a person of the name of Begorrat?—Yes.

Is he an alcalde, a judge?—He is like a lord-mayor there.

Did Mr. Begorrat come to you in prison?—He was with me in prison.

Did he examine you upon the subject of the robbery by Gonzalez?—Yes.

Did he examine you frequently upon it?—Yes, at various times.

On different days?—Yes.

Did you make any declaration to Mr. Begorrat respecting the robbery?—Yes, I did.

Was there a person present of the name of Francisco de Castro, an escrevano?—Yes.

Present with Mr. Begorrat?—Yes, de Castro was a clerk.

Interpreter.—Escrevano means a scrivener.

Mr. Garrow.—From the depositions it appears he is a mere writer, something like a clerk at Bow Street.

Mr. Adam.—Were those examinations carried on while you were confined on the woman's side of the prison?—At the first examination I was in a separate room.

Were you afterwards carried to a room where there was a piquet erected in the gaol?—Yes.

What was the nature of that instrument of torture, can you give an account of it in English, and the manner in which it was applied?—This hand [*the left-hand, raising herself*] was tied up, and then this hand [*the right-hand*] was tied to the left-foot.

Was it your left-foot that was tied to your right-hand?—Both; they put me first of all on one side, and then they took me down, and tied me up on the other side.

The first time they tied you up, did they tie you by the left-hand?—Yes.

Which foot was tied to the right-hand?—This foot [*The left-foot.*]

Then your left-hand was tied by a rope?—Yes.

Was it fixed to the ceiling, or did it pass through a pulley?—Yes, through a pulley.

What was your right-foot placed upon?—Upon the piquet.

Mr. Garrow.—The toe resting upon a sharp point of wood?—Yes.

Is that a faithful description of it?—[*Showing the witness a coloured drawing.*—Yes, very good indeed.

Mr. Garrow.—I wish your lordship could have seen the involuntary expression of the

sensations of the witness upon looking at the drawing.*

Lord Ellenborough.—I do not approve of exhibiting drawings of this nature before a jury, and I shall not permit it, till the counsel for the defendant has seen it. I have no objection to your showing a description to the jury, but the colouring may produce an improper effect.

Mr. Dallas.—I have no objection whatever on the part of my client that the jury should see it, but it certainly is not the usual course of proceeding in a case of this sort.

Lord Ellenborough.—The jury will consider it merely as a description of the situation in which she was placed; whether she was justifiably so placed in the question between you.

Mr. Garrow.—I have one to which there can be no objection, it is a mere pen and ink sketch.

Is that a correct representation?—[*Showing it to the witness.*—Yes, this is correct.

[The last-mentioned drawing handed to the Jury.]

Lord Ellenborough.—Gentlemen, you will consider that as a description of the position, which we can easily understand from the words of the witness; nobody wishes that any improper impression should be made by that drawing, it is only to show the nature of the process; you see the suspension by one arm, and the resting upon the opposite foot.

Mr. Adam.—At what time of the day were you first tied up in this way?—In the afternoon.

Of the first day?—Yes.

Can you tell how long you remained upon it?—Three quarters of an hour, they said.

Was your foot allowed to rest upon the spike of wood all that time?—Yes.

Were you at any time drawn up by the rope?—Yes.

So as to suspend you?—Yes.

Had you seen any persons placed in the same situation before you yourself were?—Yes, I had.

How many?—Two of them.

Mr. Dallas.—Is that evidence?

Lord Ellenborough.—I do not think that should have been asked.

Mr. Adam.—I will not insist upon it.—What effect had this torture upon your body the first time you were put upon the piquet?—A great deal of pain.

What effect had it upon your wrist?—The wrist swelled very much.

And what upon your foot?—My foot was very much swelled also.

Were you asked to make any declarations respecting the robbery while you were tied up?—Yes, I was.

* This is the scene adverted to by Mr. Whitbread, on Lord Melville's Trial, in the preceding Volume of this Work, p. 1428.

Were you sworn before you were tied up?—Mr. Begorrat asked me if I would declare who took the money.

Was any oath administered to you?—No more than the Holy Cross being held up to me.

Did you make any declaration? what did you say respecting the robbery at this time?—I declared to the lord-mayor that Carlos Gonzalez had taken the money; that was while I was suspended.

Do you recollect whether this first time that you were tied up was on the 23rd of December 1801?—I do not recollect the day.

Lord *Ellenborough*.—Do you recollect whether it was in the month of December?—Eleven days after I was sent to prison.

Mr. *Adam*.—Was it about Christmas time?—Yes, it was about Christmas time.

When you were taken down what was next done to you this first time?—They took me into a lower room called by the name of Mr. Vallot's room.

Who was Mr. Vallot?—The gaoler.

Were you kept in the room all night?—No, I was taken there to own to Mr. Vallot who had taken the money.

When you were taken down to the gaoler's room did you see Carlos there?—Carlos was there.

How long were you kept in the gaoler's room?—Not long; I cannot recollect how long.

You were not detained there all night?—No.

Where did you go after you left the gaoler's room?—Into the same room where I had been suspended.

Were you kept there all night?—Yes, all night in that room.

Were you put in irons?—Yes, in the grillos.

Describe the grillos?—

Mr. *Adam*.—That, my lord, is the name of the fetters.

Witness.—There is a piece of wood, and a hole just below, and an iron-bar runs through it, with two iron rings for the legs.

Were you fixed to that iron-bar?—All that same night.

How were you fixed to it? by the legs or how?—The iron went down to my ankle.

Mr. *Garrow*.—This is a representation of the iron—[*Showing the witness a drawing of it*].—Is that like it?—Yes, it is.

Mr. *Garrow*.—It is a long iron bar, to which the leg is fastened by a ring.

Mr. *Adam*.—Did you remain fastened to this iron all night?—Yes, all night.

Were you put upon the piquet again the next day?—Yes, the following day.

Were you put upon the same instrument of torture, and in the same manner as you had been the day before?—Yes, the very same.

At what hour in the day?—In the beginning of the morning.

Was this the day before Christmas?—The day before Christmas day.

How long were you kept upon this instrument of torture on that day?—Twenty-two minutes.

Was there a watch placed in order to tell the time, upon a barrel or any thing?—Yes, there was a watch.

Who was present this second day, when you were put upon the instrument?—Mr. Begorrat and Francisco de Castro.

Mr. *Garrow*.—These are the same persons, the justice and his clerk.

Mr. *Adam*.—Was any other person present?—Mr. Rafael.

Lord *Ellenborough*.—Who was he?—An alguazil.

Mr. *Adam*.—By which arm were you tied up on the second day?—By both arms.

One at a time?—Yes, first one, and then they changed it to the other.

Were you drawn up by the rope the second day so as to remove your foot from resting upon the spike of wood?—I could just touch it with the end of my toe.

Were your shoes taken off both days?—Yes.

Your feet were naked?—Yes, I had no shoes on.

What effect did this produce upon you; did it make you sick?—I fainted away.

Lord *Ellenborough*.—Did you faint away on both days, or only on one of those days?—No more than one day.

Was that the latter day, or the former?—The last day.

Mr. *Adam*.—Do you know whether you were taken down upon your fainting away?—I do not recollect whether I was or was not.

Was that owing to your insensibility, or have you forgot it?—I do not recollect any thing of the kind.

Did they take you down before you fainted away or after you fainted away?—I do not recollect whether they took me down first or after, but I did faint away.

Did they administer any relief to you, or give you any thing?—Mr. Vallot, the gaoler, sent some vinegar to rub my nose with.

To what place were you taken after you were put upon this instrument the second time?—In the same place where I was upon the piquet.

Were you again put in fetters?—Yes, I was put in irons.

How soon were you put in irons after you were taken down?—The same night; the day that I was taken down, the same evening they put me into irons.

How long did they keep you in irons?—All the time that I was in prison.

How long were you in prison?—Eight months.

Were you at any time taken from the prison to the house of Pedro Ruiz?—Yes.

How long was that after the last time the torture was inflicted?—This Mr. Begorrat the

lord mayor took me to the house of Ruiz one time.

Do you recollect how long that was after the torture?—I cannot recollect the time.

Was it a month?—I cannot say.

Were you able to walk there without assistance?—I was so very bad that I went all the way quite lame.

To what was that lameness attributable?—The irons that I was put into.

What age were you at the time you were confined eight months in gaol?—Thirteen years, and going for fourteen.

How came you to be released from the prison at the end of eight months?—I do not know what the reason was that I was liberated; I cannot tell the reason.

Had col. Fullarton arrived in the island of Trinidad before you were liberated?—After I was liberated col. Fullarton arrived in the island of Trinidad.

Were you liberated after he arrived, or before?—Before.

How soon after did he arrive in the island?—I cannot recollect the time.

Are there any marks of the injury you received from the torture or irons now remaining?—On my hands I have some, but none on my feet.

On which hand?—Upon both hands, upon my wrists (*showing them.*)

Are those the seems of the cord that was tied round your arm?—Yes, the marks the cord made.

Luisa Calderon cross-examined by Mr. Dallas.

What space of time elapsed between your release from prison and your coming to England?—I do not recollect.

Was it many months?—I cannot say how long a time.

Did you come with col. Fullarton?—Yes, I came with him here.

By whom have you been supported since you have been in this country?—By one Mr. White.

Who is Mr. White?—A gentleman in London.

Lord *Ellenborough*.—I suppose she means Mr. White, solicitor to the Treasury.

Mr. Dallas.—That is all I want, my lord.

Rafael Chando sworn.—Examined by Mr. Garrow.

Perhaps you speak English enough to answer a few questions?—I understand you.

Were you one of the alguazils of the Port of Spain in the island of Trinidad in December 1801?—Yes.

Mr. Dallas.—I do not know whether this is the usual way in which witnesses are sworn in that country; for the sake of regularity, I wish to have that explained.

Mr. Garrow.—You are a Christian, I apprehend?—Yes.

When you call God to witness, you consider yourself bound to tell the truth?—Yes.

Is there any other mode of swearing more binding* upon your conscience than the oath you have now taken?—No.

You feel yourself bound to speak the *whole* truth when you call God to witness it?—Yes.

You were sworn in the same way before the privy council?—Yes.

You said you were one of the alguazils of Trinidad in December 1801?—Yes.

Do you remember returning from the country where you had been engaged in some business on the day but one before Christmas day in that year? on the 23rd of December?—Yes.

Do you know a young woman of the name of Luisa Calderon?—Yes, very well.

When you arrived at the gaol on the 23rd of December, did you see Luisa Calderon?—Yes, I saw Luisa.

Under what circumstances did you see her?—I saw her with the gaoler man, Mr. Begorrat, Mr. de Castro, and Joseph Flores.

He was one of the judges?—He was one of the alguazils.

What were they doing with Luisa Calderon when you came in?—They were giving her a glass of wine and water.

On what account were they giving her a glass of wine and water?—They had just been bringing her down from the torture.

Was she at that time in a state of suffering and pain which required some relief?—Yes, I think very much so; she was very much swelled in the hands and feet at the time they gave her the wine and water.

What position was she in?—She stood close by a table to support herself with her hand, and seemed suffering very much.

You said something about her feet and hands; it had been done before you came, and she appeared to be suffering from that?—Yes.

What time in the evening of the 23rd was it?—About 7 or 8 o'clock at night, I do not know exactly.

Did she recover after she had had this wine and water?—No, Mr. Begorrat asked questions of Luisa.

Was Carlos there?—No, Mr. Begorrat said "Luisa, you will tell before Carlos the same that you have told me." Luisa said, "yes, sir."

What passed then?—Mr. Begorrat then desired me to fetch Carlos up.

You brought Carlos into Luisa's presence?—Yes.

What passed then?—In about two or three minutes he sat down.

After he came into Mr. Begorrat's and de Castro's presence, did any thing pass?—No, he never spoke, only I was to bring him before Mr. Begorrat.

What became of Luisa that night?—She was put into the grillos directly.

* As to questions of this sort, see the opinion of the Judges delivered by lord chief justice Abbott on the Queen's case, 2 *Bro. and Bing.* 284.

Is this a true description of the iron (*showing him the drawing*)?—Yes, just the same.

Two rings for the foot, and then a long iron?—Yes.

In what room was she confined that night?—In the same room where they gave her the torture.

What was the form of that room as to its ceiling?—Like a garret, the middle high and the sides very low.

Was there room enough for her to sit upright?—No, she could not sit upright.

Not in the middle of the room?—No, she was obliged to crouch down.

Where the iron was placed, she was obliged to stoop?—Yes, so as to sit down.

Did she remain in that room all night?—Yes, all the while she was in custody, all night and all day long about eight months.

You have been now describing to us what passed upon the 23rd?—Yes.

Was she again put to the torture the next day?—Mr. Begorrat told me to go to de Castro to know whether he was ready to go to the gaol, and he told me yes.

When was this?—On Thursday, the day after the first torture, they gave her the second torture.

Do you know whether that was the day before Christmas day?—I know it was the day after the first torture.

In what part of the day was the second torture applied?—Between 11 and 12 in the forenoon.

The first torture had ended about 7 at night?—Yes.

Describe to my lord and to these gentlemen what was done to Luisa upon the second day?—He gave her the torture again.

Describe what they did to her?—They hung her up in the torture.

In what way?—This hand and this foot tied in this way [*the left foot passed behind the right leg, and received by the right hand*].

Lord Ellenborough.—The girl described it the other way.

Witness.—The left hand fastened up, and the left foot passed behind her right leg, and tied in the hand, and then a very little bit of the toe just touching the spike.

Is that a true description of it [*showing him the drawing*]?—Yes, just the same.

How long did she remain in the situation you have been describing the second time?—By my own watch 22 minutes.

Did she appear to you to suffer very much by this torture?—She fainted twice into my own arms.

Did she while she was suffering make any application to be in any manner relieved by altering the mode of the torture?—Never, no further than speaking for a little drop of vinegar.

You do not understand the question. Did Luisa ask to be let down at all?—No, at the time that she fainted and fell into my arms Mr. Begorrat got some vinegar, and put it to her nose.

Was that while she was tied up?—Yes.

Then somebody applied vinegar to her nose?—Yes, Mr. Begorrat gave it to me.

After she had fainted twice, and been tied up 22 minutes, was she taken down?—Yes.

Did it appear to you that she could have endured it any longer?—No, I cannot tell you any more than that in 22 minutes they took her down from the torture.

Did it appear to you that, without danger to her life, she could have endured it any longer?—I think at the time she fainted away twice into my own arms she could not.

Was there any defender appointed for her, or any body to take care of her interests?—I saw no one.

Was there any one there besides this thing called a judge, the *escrivano* and the *gaoler*?—There was nobody else there when she fainted away at the time they brought up the vinegar.

Was there any surgeon to take care of her in case of any accident happening?—No, the negro of Mr. Vallot, the *gaoler-man*, pulled the rope.

What became of this poor creature after she was taken down?—They put her in irons directly.

In the state in which she had been before?—Yes.

You told us she continued in this state for eight months?—Quite eight months.

Was she during any part of that time permitted to go at large or to leave those irons, and this miserable and wretched confinement?—No, they carried her once or twice to the house of the man that had been robbed.

She was in the custody of the *gaoler* at the time?—Yes, I went there with a constable.

Except that, she was closely confined for the eight months?—Yes.

Was she deprived of the assistance and society of her friends?—I did not see any body. I have seen the sister bring her some victuals, but never go to see her; she gave it to the *gaoler*.

They never permitted her to go to the dungeon?—I do not know whether they permitted her or not, I did not see it.

How long had you lived in the Port of Spain?—About 8 years.

Did you live there before the island surrendered to sir Ralph Abercrombie?—Yes, about 4 or 5 months before.

Had you been an *alguazil* all the time you were there?—No.

How long had you been an *alguazil*?—About 4 or 5 years.

Did you ever hear or know of torture being inflicted upon a person in custody till after governor Picton arrived there?—Never.

You know the place in which this instrument of torture was erected?—Yes.

You told me you never knew or heard of any body being tortured; was there any instrument to inflict the torture before general Picton arrived?—The first place of torment

that I ever saw in the island was among the soldiers in the barracks.

Was even that erected before governor Picton arrived?—No; governor Picton, for the first time, ordered me and the gaoler to make that which was called the piquet in the barrack-yard after he became governor.

Did you ever see any thing of that kind there before?—Never.

How long was it after the instrument of torture was used in the barrack yard before any instrument of torture was used in the gaol?—That was the first torment I ever saw in my life.

How long after that was it before any instrument of torment was erected in the gaol?—I cannot tell how long it was erected before Luisa was tormented.

Was it a short time before?—Five or six months.

Are you quite sure it was after col. Picton became governor?—Yes; I was the person he ordered to go to the gaoler-man to desire him to inflict the torture upon a black man of the piquet guard.

Col. Picton said to the gaoler, "go you and fetch the black man of the piquet guard to be put upon the torture"; that was the first instance of torture that you ever heard of in Trinidad?—Yes.

And you are quite certain that was the first instrument of torture you ever saw or heard of in Trinidad?—Quite sure, I never saw or heard of any in this place before:

And none in the gaol?—No, I went there frequently.

You were an officer of justice?—Yes.

And according to your belief it was erected about 5 or 6 months before Luisa was tortured?—Yes, about 5 or 6 months.

You have told us she remained about eight months; was she ever brought to trial?—Yes; She was brought to what you call here the parliament—(after some hesitation) the justices, and they said, "Luisa, what did you do with the money."

Carlos and Luisa were both discharged afterwards?—Yes.

Rafael Chando cross-examined by Mr. Lawes.

When was Carlos discharged?—At the time that the judge ordered him to be discharged, upon payment of the money.

What became of him afterwards?—He went to a place called Margarita.

He was sent out of the island, was not he?—Yes.

Mr. Garrow.—By Begorrat?—I cannot tell you whether by Mr. Begorrat or col. Picton.

Juan Montes sworn.—Examined by Mr. Harrison.

Can you understand what I say in English?—Very little.

Are you acquainted with the hand-writing of colonel Picton?—Yes.

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Look at that (*showing him a book*), is that his hand-writing?—It is.

Is the signature only his hand-writing, or the writing before it?—It is all his hand-writing.

[*It was read*] Appliquez la question à Louisa Calderon. THOMAS PICTON.

Mr. Garrow.—That is, apply the torture to Louisa Calderon, Thomas Picton.*

Mr. Dallas.—My lord, it appearing clearly (whether it be written in Spanish or in French) that it is an answer to something, I submit to your lordship, that we are entitled to have that read to which this is an answer.

Mr. Garrow.—I do not take this to be an answer, I take it to be an order; the words purport to be an order, not that I am at all anxious about it.

Lord Ellenborough.—It is certainly written in consequence of some application to the defendant, which I suppose that paper contains, for liberty to inflict the torture; if it does, we should have the whole before us.

Mr. Dallas.—All I either wish or desire is, to have that representation laid before the Court which was made to colonel Picton, and to which what has been already read is an answer.

Mr. Garrow.—The only question here is, whether my learned friend can, in the course of my case, read that to which this is supposed to be either an answer or an order; it is a matter of very little importance to me; but when I find a paper, the whole of which is written by colonel Picton, I think I am entitled to read it: but I have no difficulty in stating, that there is a representation of Mr. Begorrat, in which he says he has no power to inflict torture, without the consent of the governor; he asks leave to inflict a slight torture, and then comes the order for the torture. I have no objection to Mr. Begorrat's representation being read, if your lordship thinks it proper.

Lord Ellenborough.—It is impossible to understand it without.

Mr. Garrow.—Does not your lordship think it must be received as their evidence, and not mine.

Lord Ellenborough.—No.

Mr. Lawes.—Be so good as read the preceding act of Mr. Begorrat.

Mr. Garrow.—It is, perhaps, unnecessary to caution such a jury as this, that the representation of Mr. Begorrat proves no fact; it is only *his representation*.

[Mr. Lowten reads it.†]

Mr. Garrow.—I will thank you to read a little further, and his lordship will see Mr. Begorrat's account of the manner in which he executed this order.

[Mr. Lowten reads it.‡]

* Vide, p. 341.

† Vide, p. 340.

‡ Vide, p. 341.

Lord *Ellenborough*.—Does it appear, that this subsequent matter was known to colonel Picton?

Mr. *Dallas*.—No, my lord, not at all.

Lord *Ellenborough*.—All that is attested as notified to him is evidence against him.

[Mr. *Harrison* resumed the examination of *Juan Montès*.]

How long have you known the island of Trinidad?—Since 1793.

In what capacity?—In a military capacity, as an assistant to the engineers.

Were you in any legal situation there?—Before the conquest, my capacity was military.

Did you ever know torture applied in that island?—Never.

When was it first introduced? when did you first see or hear of it?—After the conquest, by order of governor Picton.

How long after?—The first instance of torment was in 1799.

When was it first introduced into the gaol?—*Luisa Calderon's* was the first that was in the gaol.

Where was the other instrument of torture that you alluded to before?—In the piquet guard-room.

Was it first introduced into the gaol or the guard-room?—The piquet guard-room.

By the piquet guard-room, you mean the room where the soldiers were upon piquet?—It is a guard of soldiers.

How long after that was it introduced into the gaol?—I cannot say positively, I know very well it was in the year 1801.

About two years afterwards?—Pretty near two years.

Mr. *Garrow*.—In order to save time I will state, for my learned friend's consideration, that I have many witnesses to prove, that the instrument of torment was not introduced till after colonel Picton arrived, and became governor; if that is not disputed, there will be no occasion to call them; but I have persons of the first respectability to prove it.

Lord *Ellenborough*.—I dare say it is not disputed; if it is, Mr. *Dallas* will tell you so.

Mr. *Dallas*.—I do not mean to dispute it.

Mr. *Garrow*.—We have alleged that the defendant, was in a civil and military capacity in the island; this order is made by him in that character, and I shall consider the allegation as proved; for your lordship will observe in the proceedings he recognises himself to be governor, and is addressed as his excellency; he has taken the character upon himself, as appears upon the face of the proceedings.

This is my case, my lord, on the part of the Crown.

DEFENCE.

Mr. *Dallas*.—Gentlemen of the Jury; the case on the part of the prosecution has certainly not been, either in statement or in

proof, a very long one; and it now becomes my duty to address you in behalf of the defendant general Picton. I can with perfect truth and sincerity assure you, that the situation in which I am placed this day has been by no means a matter of choice;—having ceased to be in the habit of attending this court, it will hardly be supposed that I could have had so much confidence in myself, or so little sensibility for the dearest interests of others, as to have undertaken the defence of my honorable and gallant client upon the present occasion, if the determination had in any degree depended upon me. But, unfortunately, I have failed to convince general Picton of what every other man would at once have admitted—that my feeble abilities were ill adapted for his defence, and that upon my being withdrawn, the task would have devolved upon a gentleman better qualified in every respect (except in anxiety to serve the defendant to the utmost possible extent) to fulfil it. Such are the circumstances of my present situation: but in declaring them, I hope I shall not be misunderstood. Let it not be supposed, that I mean to insinuate that there are any difficulties peculiar to the case which would have deterred me from undertaking the defence of the honourable person whom I represent; neither let it be imagined, that I feel at all discouraged by any degree of unpopularity which may be supposed to attach to the cause I shall maintain: these are disadvantages which I hope in common with every gentleman at the bar: I can boldly and manfully encounter. What I mean to say is, that when I consider how much general Picton has at stake upon this occasion, I would, if possible, have spared myself the anxiety which the conduct of his defence must necessarily engender in the mind of any man—even of such of my learned friends as are most accustomed to address juries in this place—and which anxiety is increased by the consciousness of my not having those qualifications which constant practice and experience in this court must necessarily bestow.

I agree with my learned friend, that the case now before you is novel and extraordinary: nor do I mean to deny, that in whatever light it is considered, whether as affecting the public or the individual under accusation, it is of the greatest magnitude. On the one hand, nothing can be of more importance to the public than that extensive powers, entrusted to a representative of our sovereign for the purposes of justice, should not be converted into engines of malice and oppression; on the other, it is of the deepest concern to the gentleman whose conduct is arraigned, that, if it should appear upon the evidence that he has done no more than what a faithful discharge of his duty required, he should not be consigned to ruin, and—what to a mind like his is infinitely worse than ruin—dishonour, by the verdict which you shall

deliver—a verdict which (to repeat the concession made by my learned friend in his opening speech) nothing ought to induce you to pronounce, unless the facts proved in evidence should reluctantly force it from you.

It is impossible for me, gentlemen, rising to address you upon a subject so momentous, not to feel myself, even at the outset, surrounded and pressed upon by difficulties which, for the sake of impartial justice, I would fain if possible remove. I cannot but have felt that a case of this nature, stated as it has been, and supported as it has been by the exhibition of prints and drawings, exposed to the view of every person in court, and assisted by a species of acting which I at least have for the first time witnessed in a criminal prosecution—I say I cannot but have felt that such a case, founded upon a charge of torture, and so stated and supported, must in its progress have created powerful sensations, even in men determined to keep their minds as indifferent and impartial as possible—sensations very unfavourable to the party for whom I appear.

Lord *Ellenborough*.—I would not permit the drawings to be shown to the jury, until I had your consent.

Mr. *Dallas*.—My lord, I acknowledge it; and perhaps therefore I am not correct in now adverting to any advantage that may have been taken of such a concession.

Gentlemen, I was proceeding to state, that living as we do in a country where that law which has been truly called the perfection of reason is, as far as human circumstances will admit, most perfectly administered, and the chief characteristics of which are mildness and humanity, it is impossible not to feel how difficult it must be to win the mind, if I may so express myself, to the contemplation of a different state of things, and to a conviction that a system diametrically opposite to that pursued in this country may be absolutely necessary in a distant clime and in different circumstances, and may consequently be strictly defensible in this court. Difficult, however, as the task must unquestionably be, I am fully persuaded, gentlemen, that with whatever feelings you may have been impressed from the manner in which this cause has been conducted, and from the exhibitions which you have beheld, you will endeavour to divest yourselves of their influence; and that, with impartial and unprejudiced minds, attending only to the facts that shall have been proved, and applying to those facts the legal principles which I shall lay down, and which will be confirmed by the sanction of his lordship, you will ultimately pronounce a calm and dispassionate verdict.

Before I proceed to consider the charge in this particular case, and which, with great deference to my learned friend, I must say will require a more correct examination than he has thought fit to bestow upon it, I will

shortly state what I conceive to be in point of fact the sum and substance of the case even as it has been disclosed to you by the evidence adduced in support of the prosecution.

It appears, that some time previous to the year 1801 general Picton had been appointed governor of the island of Trinidad, and that as such he was invested not only with the supreme military but also with the supreme civil authority of that settlement. It is now admitted, that in the month of December in that year, a robbery had been committed in the dwelling-house of a man named Pedro Ruiz; that at the time when the robbery was committed, the person who has this day appeared as a witness before you was living as a domestic in the house of Ruiz, and in a state of prostitution with him; that the robbery was to a very considerable extent; and that it was committed by Carlos Gonzales, a man with whom the witness Luisa Calderon was indulging herself in a criminal intercourse during the time she was living with Pedro Ruiz as his mistress. This robbery would have been, by the laws of England, a capital felony; and if Luisa Calderon was privy to and an accomplice in the offence committed by Carlos Gonzales, even according to the mild and merciful law of this country, they both would have forfeited their lives; for it is hardly necessary to remind you, that if a domestic servant becomes a party to a robbery of this description, it is a case the most painful to an English judge, for it is one in which he can never interpose in behalf of the offender, the law is invariably suffered to take its course, and the crime is expiated by an ignominious death. Such are the facts which have been disclosed to you by the statement of my learned friend; they are in part substantiated by the evidence which he himself has brought forward, and will be fully developed by that which it will be my duty to adduce.

Under these peculiar circumstances, information was laid before general Picton at the Government-house, in consequence of which this young woman was brought before him, and the conversation took place to which she has this day deposed. You will observe then, gentlemen, that all that general Picton did in the first instance, on receiving this information of a capital offence having been committed—and committed under circumstances which, to adopt an expression of Mr. Garrow's, involved my learned friend's own witness in a considerable degree of suspicion of being an accessory to the crime—was to dismiss from himself all consideration of the subject, and to refer the investigation to the ordinary and competent tribunal of the colony. It appears, that the defendant ordered all the parties accused—not only this young woman whom it is now alleged that he had a particular desire to oppress, but also her mother, Carlos Gonzales, and another person—to be committed to prison for the purpose of

being examined by Mr. Begorrat, whom my learned friend chooses to represent as a justice of the peace, but whose powers and authority were of a very different description. Admitting however, for argument's sake, that his office corresponded with that of our justice of the peace, the evidence adduced by the present prosecutrix merely proves, that strong suspicions having arisen that she had been guilty of a capital felony, she was committed to prison by general Picton, to undergo an examination before a justice of the peace, in order to ascertain, if possible, how far she was implicated in the transaction.

Such is the history of these proceedings, according to the evidence which my learned friend has laid before you; and you will permit me to pause here for a moment, that I may call your attention to a distinction which strikes my mind at least as being very material, and which I think will hereafter be found to have most important bearings upon all parts of the case. This charge is not instituted against general Picton and Mr. Begorrat for a conspiracy to accuse a person of a capital felony whom they knew to be innocent, in order to subject that person to the imprisonment and torture which afterwards took place; but instead of thus attacking the source of the affair it breaks in, if I may so express myself, upon the full tide and current of it, and imputes to the defendant as an act of great criminality that which took place during the progress of an inquiry into a highly penal charge, *the first step not having been taken by himself.*

Under the circumstances which I have described, reference was made to Mr. Begorrat, who then held the situation of alcalde or criminal judge; and it appears even in this stage of the case, and from the evidence given on the part of the prosecution, that the torture, such as it was, was not applied until every means had been in vain resorted to by Mr. Begorrat to avoid it—this torture which it is now the object of my learned friend to represent to you that general Picton was, from the mere love of oppression, so desirous of inflicting upon the young female who has appeared before you. Witness after witness had been called, day after day had been consumed in the examination of them, and it was only after repeated prevarications on the part of Luisa Calderon, and after the suspicions of the judge had been confirmed, that Mr. Begorrat in the last instance made that representation and application to the governor, which you have this day heard; and you will there find, that it was after eleven days investigation, in the course of which a great number of witnesses were examined, that this memorial was laid before the proper tribunal.

Here, gentlemen, in this second stage of the proceedings, it is important to remark that the application of torture appears most clearly not to have originated with general Picton; he merely received the representation of the or-

dinary criminal judge, before whom the inquiry had been conducted, and who was sworn to perform the duties of his office according to the laws of Spain, as established in Trinidad; that representation stating, that it would be proper to inflict a slight torture, he acquiesced in the suggestion and suffered the law to take its course. It is most material that you should bear this in mind; because, when we are considering a criminal charge the essence of which is (as it was avowed by my learned friend in his opening speech) the allegation of malice—of a desire on the part of general Picton to oppress the particular individual, it is highly necessary to investigate every part of the case that we may discover the commencement of this malice, from which all the subsequent proceedings are stated to have sprung, and to which consequently they must be traced. It is most extraordinary to impute malice to general Picton, when it appears that instead of the torture having originated with him, or any order having been given by him in the first instance, he never entertained a thought of the kind, he never issued any order or took any step until it was suggested to him in the regular and ordinary course by the judge, as fit and expedient. Whether it was fit and expedient is a different consideration, but when you are to decide upon the motives of the defendant, it is important to bear in mind that all he did in the first instance, was, upon a reasonable suspicion of guilt, to commit for examination; and in the next instance, merely to confirm a suggestion made to him as governor by the ordinary criminal judge, before whom the affair had been investigated in the court below.

These, gentlemen, are the circumstances connected with the origin and foundation of this business. I pass over the many details of subsequent events which we have heard from the few witnesses who have been called. The manner in which the torture was inflicted—the length of time which it occupied—how often it was repeated—the sort of room in which she was confined—the treatment which she received while in the custody of the gaoler—all these (I speak under his lordship's correction) are circumstances for which the defendant is in no degree responsible, unless it can be shown that he was privy to the manner in which the order was carried into execution. For I assert, with the utmost deference to his lordship's opinion, that nothing can be more clear in point of law, than that if by the law of Spain which he was sworn to administer, general Picton was warranted in issuing the order for the application of torture to this young woman, he is not answerable for any excesses which may have been committed in the execution of that order by the persons whose duty it was to obey it. If, therefore, that which was ordered to be slight was in fact violent and excessive, or was continued longer than it ought to have been—if the place of

confinement was improper—or the imprisonment unjustifiably protracted—these are matters for which the persons immediately concerned are amenable, and which cannot, here or elsewhere, affect the defendant with the slightest degree of criminality. And you will not fail to remember that the case on the part of the prosecution has closed, without an attempt to prove by any one witness, that for a single moment during the eight months in which this young female was imprisoned, from her first commitment until her final discharge, she was ever seen by general Picton; or that from the moment when, in compliance with the suggestion of Mr. Beggarrat, he suffered the law to take its course, he interfered in any way whatever in any stage of the proceedings.

Having thus given a summary or general outline of the facts of the case, I shall entreat your attention while I endeavour to lay before you an accurate examination of the charges set forth in the record.

This indictment, gentlemen, contains various allegations, and consists of several counts, each of which it will be necessary to consider separately because they stand upon very different grounds. Without however examining minutely the manner in which the charge is varied in each count, I may safely state, borrowing the expression of my learned friend, that the case which the record presents against general Picton is founded upon two broad and general principles. The first is, that the act done was unlawful; *i. e.* that by the law which the defendant was sworn to administer he had no right whatever to order the torture to be applied; and this is alleged in every one of the counts of this indictment; it is stated in all of them that he *unlawfully* ordered torture to be inflicted. The first ground, therefore, upon which the foundation of the charge is placed, is the illegality of the act imputed to the defendant, *viz.* the issuing an order for the application of the torture in the particular instance before us. But there is also another ground on which the indictment is rested, and which will be the main object for your consideration, namely, an averment, that this act was not only done unlawfully, but was also done *maliciously*, and without any reasonable or probable cause. Now it is manifest, that not only according to strict legal construction, but also to the plainest principles of reason and common sense and the most obvious notions of natural justice, no two cases can be more dissimilar and inconsistent, than that in which error only is alleged, and that which imputes malice, unaccompanied by any reasonable or probable cause. It is possible, that the most enlightened and upright judge, may on some occasion in the course of a long life, mistake the extent of his jurisdiction, exceed its limits, and thereby do an act, which, strictly speaking, would be unlawful; but it is impossible

that such a person should do any act which could also be denominated malicious, and not to be justified by any reasonable or probable cause. To say of any man that he has acted maliciously, excludes the notion of his having acted erroneously; for no man can be said to act maliciously, unless it can be proved, that he has been actuated by a wrongful motive—the desire of injuring another. If, upon a correct examination of the case, you should be of opinion that, according to the Spanish code, to which the defendant was bound to adhere, it was lawful to proceed as he did in this particular instance, the present accusation cannot be sustained and he cannot be convicted, because you would thus negative the illegality which is the very gist of the charge, and which is averred in every count of the indictment. If, however, you should form a contrary opinion, it will then remain for you to determine, whether general Picton was misled into an erroneous exercise of power, by a misconception of the Spanish law, of the authority with which he was invested, and of the duties which were imposed upon him, or whether he was actuated by malice—by a tyrannical desire to oppress a particular individual. It will be necessary that you should keep these different questions clearly in your view, that you may be able to apply the evidence to them distinctly hereafter.

In investigating the particulars of this transaction, the place in which it occurred is first to be considered. This was the island of Trinidad, over which general Picton had the supreme civil and military command; and it is most important, that you should bear in mind all the accompaniments of the scene where the affair took place. When an offence has been committed in this country, it is only necessary, that the indictment should in the first place aver, that the facts complained of were unlawful, and that it should then set forth, with sufficient particularity, the facts themselves, in order that the Court may on reading the record see whether the offence charged be a crime known to the law of England. The facts being proved, it is for the judge to decide whether they amount to an infraction of the law; and the decision depends upon his knowledge of that law, which he is bound to administer impartially, and in the administration of which he is daily employed. But where an offence is alleged to have been committed in another country, the laws of which are essentially different from those of Great Britain, the investigation proceeds upon principles always perfectly distinct, and sometimes diametrically opposite. If, for example, it was the duty of general Picton in this instance to act, not according to the law of England, but according to that of Spain, in which it is obvious that the very learned judge who now presides, is not bound, and is not presumed to be conversant; in such a case, the *law* of this foreign settle-

ment must be proved as a substantive fact, and by as incontrovertible evidence as any other fact which it is incumbent on the counsel for the prosecution to substantiate. Let it not be taken for granted, that the defendant must be found guilty of the offence imputed to him by the indictment, because he would have been deemed criminal if the law of England had been the rule by which he was to be guided. You, gentlemen, well know, that no two systems of jurisprudence can be more opposite, than the law of our West Indian colonies and that of the mother country. Many instances might be adduced, but I will only call your attention to one in illustration of my position. I will suppose, that a gentleman, after having passed many years of his life in the island of Saint Vincent's, and having there held certain magisterial situations, should, upon his arrival in England, be taken into custody, on a charge of maiming and disfiguring a particular individual during his residence in Saint Vincent's: this, according to our law, would amount to felony. I will further suppose, that in support of such a prosecution, a witness should appear in this court, not in the circumstances in which Luisa Calderon has presented herself before you (for she has sustained no permanent injury), but horribly maimed and disfigured, with his nose slit and his right hand amputated, and should tell you on his oath, that this was inflicted by order of the defendant, for no other reason, than that he had obstructed and resisted a constable, who was taking him to be flogged for having lifted his hand against some cruel task-master. Nay, I will go further, and suppose, that instead of being thus maimed and disfigured the person had actually suffered an ignominious death at the place of public execution; and, that the indictment had charged the foul crime of murder—would not every Briton, possessing feelings and principles founded upon the law of his country, on hearing, that the punishment of death had been inflicted upon a man for raising his hand against a constable, instantly and emphatically exclaim, "The man who hath done this thing shall surely die!" But, when the defence should be heard, it would be found fully adequate to the occasion. The magistrate's justification would instantly be admitted, and his lordship would direct an acquittal as soon as the law of the island, which I will now read, had been referred to. It is this:

[Here Mr. Dallas read the law of the island of St. Vincent's, which he had cited and which imposed the punishments mentioned by him, at the discretion of two magistrates, upon any slave who should be guilty of the offence described by the learned counsel.]

What is this? not the law of Spain, but the law of an English colony, and which was passed in that colony, upon a petition to his

majesty at home. By the English law therefore, as applicable to one of our own settlements in the West Indies, any two justices of the peace (to whose office my learned friend has thought fit to assimilate that of Mr. Begorrat) may, at their own discretion, and without the intervention of a jury, for such an offence as I have described, cause a fellow-creature to be disfigured and maimed, or even consign him instantly to the scaffold.

Can the two cases be compared? Luisa Calderon, the present prosecutrix, has undergone a punishment which is not uncommon in this country; but, were this otherwise, would any man, acting upon the feelings of natural justice, tell me that in point of enormity any comparison can be instituted between the case of that young woman who is in as full possession of health as she was at any time before the infliction of the torture—and that of a person, who with his face so disfigured as to have lost the character of humanity, and with his body deprived of its most valuable member, should prosecute an English magistrate of the English island of St. Vincent's, for proceeding according to the colonial law of England? And yet, however it might shock our feelings, however repulsive it might be to our sense of natural justice, however we might regret for the honour of human nature, that such a law should exist in any country of the earth, still the law being in force, it would be your bounden duty in such a case, not to be misled by your feelings, or to follow the law of England; but to apply the law of the particular place to the facts under your consideration, and to return a verdict of Not Guilty. It is, therefore, most important to consider the place where the transaction, which is the foundation of these proceedings, occurred; you have been already apprised, that the island of Trinidad was the scene of action, and I shall for the present assume, that a different system of jurisprudence exists there from that which is established in Great Britain.

The next question to which it is necessary to direct your attention is, what was the situation held by the defendant when this affair occurred; we must examine into that situation in order to ascertain the powers which were legally incident to it. All that is alleged upon the Record is, that general Picton was acting in a *civil and military capacity*; whether this averment is stated with sufficient particularity is not now matter for our consideration, and in all probability never will become so; but it is perfectly clear, that to say general Picton was acting in a civil and military capacity, without stating the precise nature of his office, is to throw no light whatever upon the subject. For instance, there are in the island of Trinidad, various gradations of civil power; the constable is subordinate to the judge, the judge is accountable to the governor, all are subject to appeal, all act in a civil capacity, and yet no

man would pretend, that if it were provided by the Spanish law that the torture should in certain cases be inflicted, it would be in the power of every constable to order the infliction of it. To say, then, merely that the defendant was acting at the time in a civil capacity is equivalent to saying nothing; and we must, therefore, travel out of the record, in order to discover the precise extent of his authority.

Lord *Ellenborough*.—The object of that allegation was, to bring the matter within our jurisdiction.

Mr. *Dallas*.—Yes, my lord, I am aware of that.

Mr. *Garrow*.—They are the very words of the statute.

Mr. *Dallas*.—The indictment undoubtedly follows the words of the statute; and the allegation is introduced, as his lordship has observed, for the purpose of giving this Court jurisdiction according to the provisions of a special act of parliament, for making offences triable here, which have been committed in the West Indies. Otherwise this trial could not have been going on here, for want of jurisdiction. But it is absolutely necessary, that the nature of the defendant's office, and the extent of its powers, should be exactly defined and clearly understood.

For many years previous to 1797, Trinidad had been a colony belonging to the crown of Spain, and no man can have looked into any general writer who has treated of the Spanish colonies in America, without remarking that at different periods very different lines of policy have been adopted in the government of Trinidad; sometimes it was their policy to encourage an extensive cultivation, at others it was totally abandoned, and at a subsequent period it was again restored. The Spanish government had, for some years previous to the capture of Trinidad by the British forces, pursued a system directly opposite to that which they followed in all their other settlements. The general principle upon which the court of Spain had acted, was by the exclusion of foreigners to confine the commerce and the trade of the colony to Spanish subjects; but prior to the conquest in 1797, they abandoned this system. The island being in the neighbourhood of a great number of small settlements, and not distant from the Spanish main, they opened the trade of Trinidad, and it became a receptacle of disaffected men, of insolvent debtors, and of criminals who had been banished from their homes. These came to Trinidad, and land was assigned to them for cultivation. So that, at the conquest of the island by that illustrious person, whose name has called forth the panegyric of my learned friend, and upon whose character no man can be disposed to bestow a higher eulogium than myself, the population was of the most extraordinary and dangerous description, being com-

posed of runaways, who had fled thither from all the neighbouring settlements.

Such was the state of Trinidad when it surrendered to the British arms, in 1797. When that event took place, general Picton was selected by sir Ralph Abercrombie, to take the command of the island. He had known him during a long period of time to have been distinguished by the most honourable conduct through all the gradations of military service; he knew him not only to be a soldier of great gallantry and high courage, but to be a man of humane feelings, and therefore general Abercrombie entrusted to the defendant (who had for many years served him as aide de camp, and who was present at the capture of the island) the government of Trinidad.

Under these circumstances the defendant entered upon his government. He was no civilian, no lawyer, his life had been chiefly passed in camps, and before that time he had never been placed in any situation of civil authority; it became necessary, therefore, that some rules should be laid down by which he might be guided in the administration of civil and criminal justice. The judicial system of the island before its cession to Great Britain, was this: certain persons, called *Alcaldes* (of whom you have heard much to-day), were the ordinary judges in criminal cases: It was their duty to take examinations, to inquire into the facts, and, after investigation, to acquit or convict: But beyond this, no jurisdiction was vested in them; they were bound to lay their sentence before the Spanish governor, whose duty it was to transmit the same to the Royal Audience of Caraccas; and from the decision of that court, there was an appeal to the Royal Council of Madrid. This accounts for the fact, on which so much stress has been laid, and of which so much use has been made, that under the Spanish government no infliction of torture took place *in the island itself*; because, as soon as any individual had been adjudged to have offended against the criminal law of the island, the cause, together with the offender, was transmitted to the Audience of the Caraccas, and thence, if the sentence of that court were appealed from to the Royal Council at Madrid.

Thus matters stood under the Spanish government; but when it ceased to exist, there could be no longer any transmission to the Caraccas, nor any appeal to Madrid; and it, therefore, became necessary, that other regulations (which I shall produce before you) should be substituted by sir Ralph Abercrombie; and by the instructions of that gallant and experienced commander, it was directed, that in all criminal cases an appeal should lie to the defendant, whose duty it was, to order the sentence of the law to be carried into execution or not, according to his own discretion. In civil causes, if the matter in dispute amounted to the sum of 500*l.* an ap-

peal to his majesty in council was allowed; but in criminal proceedings the appeal was confined to the defendant, who, with respect to them, was placed in the same situation in which the privy council were placed with respect to the others—he was the judge whose decision must be final. Such were the instructions of general Abercrombie, and which were afterwards confirmed by his majesty; by them the defendant was invested with the most extensive judicial power—that of deciding in the last instance in every criminal process.

Having detailed the circumstances of the transaction on which the supposed criminality of the defendant is built; having explained the law which prevailed in Trinidad before it became a British settlement; having shown the alterations which took place in that law when the island was ceded to Great Britain; and having stated the instructions which general Picton received, I shall now call your attention to the leading principles upon which I shall establish his defence; I shall, for the sake of perspicuity, lay them before you as distinct propositions, and I shall observe upon each of them separately.

First, I shall contend, that general Picton is entitled to your verdict, because by the Spanish code which he was bound to administer, the infliction of torture in this particular instance was lawful: if I substantiate this, my case is made out; the unlawfulness of the torture is charged in every count of the indictment.

Secondly (for impregnable as I know my first position to be, I shall not confine my line of defence to that alone), I shall submit to you that, as by this indictment the infliction of the torture is charged not only to have been unlawful, but also to have been malicious and without any reasonable or probable cause, even supposing, for the sake of argument, that the act was unlawful, it was not malicious, and that you must, therefore, acquit the defendant.

Lord *Ellenborough*.—Every thing against law is presumed to be malicious.

Mr. *Dallas*.—Whether the existence of malice and the want of reasonable or probable cause be a question of fact, or a legal inference, general Picton is entitled to his acquittal.

Thirdly, Gentlemen, under my lord's correction, I assert, that although you should be of opinion (for I have considered this subject in every possible point of view), that the infliction of torture was inconsistent with the law of Spain, still if it should appear to you, that general Picton had been misinformed as to this, and had been led to believe that the proceeding was strictly legal, this case resolves itself into one of mere error of judgment, for which no criminal responsibility attaches upon my client; and that, therefore, the indictment cannot be sustained.

Upon all of these grounds, whether considered separately or collectively, you must pronounce a verdict of Not Guilty.

First, with respect to the legality, according to the Spanish code, of the application of torture in the case of Luisa Calderon. At the very name of torture, the feelings of every Englishman are alarmed:—and why?—because the existence of torture implies practices at the mere statement of which humanity shudders. I attempt not to enumerate the horrid catalogue of those dreadful means, which even the most enlightened and civilized nations have, upon an erroneous principle of mercy, permitted themselves to adopt for the discovery of truth; some of them are most horrible; but they are various, and comprise every gradation from the highest degree of torment to a state of suffering, or rather of uneasiness, comparatively so small as not to deserve the name of torture. But after what has been said of racks and engines, and the duke of Exeter's daughter (I do not mean to impute to my learned friend any intention to mislead you), it becomes necessary, that we should fully understand all the circumstances of the particular instance now under your consideration, and which has undoubtedly been made the most of upon the present occasion.

You, gentlemen of the jury, have listened to the eloquent appeal of my friend Mr. Garrow—always animated, always ardent, always impressive—delivered in the most emphatic language that this great master of declamation could employ. You have, moreover, beheld drawings and engravings—

Lord *Ellenborough*.—That you must attribute to me, or perhaps to yourself, for I distinctly asked you whether you would consent to their exhibition, and on your concurring, I cautioned the jury not to suffer their minds to be inflamed, but simply to look at the representation of the position of the prosecutrix, in order to understand the testimony of the witness. I should be very sorry to permit the case to go to them under any improper impression.

Mr. *Dallas*.—If your lordship had heard the conclusion of my sentence, you would have seen that I did not mean to cast any imputation upon the manner in which the prosecution has been conducted.

Gentlemen, we have heard the statement of my learned friend, and we have seen drawings, the display of which I hope for the honour of justice has been confined to this court; I hope that they have not been exhibited elsewhere to influence the judgment and inflame the passions of the public, and, as a part of that public, of you who sit in judgment on the defendant. I do not mean for a moment to insinuate, that my learned friend would lend himself to such a base contrivance; he is the last man in the world to pursue conduct so dishonourable. In addition to the evidence of the witnesses, a sort of acting has

been introduced by the gentleman upon the floor [Rafael Chando]; but I do not complain of this; I consented to it at the time; I wished the case to be presented to you in any manner which to my learned friend might seem advisable, and it would be most unreasonable that, having given my consent, I should now make it a subject of complaint; my only object was, that you might have every opportunity of forming a correct notion of the sort of punishment inflicted upon this young woman. And what was it? My learned friend has said there is a process (namely piqueting) in this country very similar to it in many respects, but different from it in one, and he treats you with a sort of pun, telling you, that the punishment inflicted in this case should be called *pictoning* and not *piqueting*. We have had no drawing of the piquet, and have not seen any theatrical exhibition of that process by the gentleman upon the floor, and therefore I do not understand in what my learned friend's distinction consists. But I have no hesitation in declaring, that if you look into any dictionary of Arts and Sciences, or any book in which the term is defined, you will find the description of the piquet to correspond exactly with the punishment inflicted upon Luisa Calderon.* We see, then, that in this land of liberty, in this land which is proverbial for the humanity of its laws, the punishment of the piquet prevails; and upon whom is it inflicted? upon those brave men who shed their best blood, and risk their lives in the service and for the defence of their country. In the case of Luisa Calderon, who, if she had been convicted, would by the law of England have been doomed to suffer death,

* "The picket was another corporal punishment, chiefly used by the cavalry and artillery, and in the former often inflicted by the order of the commanding officer, without the sentence of a court martial. The mode of inflicting it was thus: a long post, being driven into the ground, the delinquent was ordered to mount a stool near it, when his right hand was fastened to a hook in the post by a noose round his wrist, drawn up as high as it could be stretched; a stump, the height of the stool, with its end cut to a round and blunt point, was then driven into the ground near the post before-mentioned, and the stool being taken away the bare heel of the sufferer was made to rest on this stump, which, though it did not break the skin, put him to great torture; the only means of mitigation was, by resting his weight on his wrist, the pain of which soon became intolerable. Soldiers were frequently sentenced to stand on the picket for a quarter of an hour. This, like the riding of the wooden horse, has been for some time left off, it having lamed and ruptured many soldiers."
—2 *Grose's Military Antiquities*, 104, edit. of 1812.

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all that general Picton did, was to order the infliction of this English punishment that the truth might be discovered; and this he did at the suggestion of the magistrate, who was bound to inquire into the nature and circumstances of the offence in the first instance. Now, was this proceeding consonant or not to the law of Spain? My learned friend has stated, and I readily agree with him, that torture is unknown in England; he has referred to a book with which we are all acquainted, and (notwithstanding some few defects) an abler treatise never proceeded from the pen of man; he has cited from the Commentaries upon the law of England this passage:—"The trial by Rack is utterly unknown to the law of England; though once when the dukes of Exeter and Suffolk, and other ministers of Henry 6th had laid a design to introduce the civil law into this kingdom as the rule of government, for a beginning thereof they erected a rack for torture; which was called in derision the duke of Exeter's Daughter, and still remains in the Tower of London, where it was occasionally used as an engine of state, not of law, more than once in the reign of queen Elizabeth. But when, upon the assassination of Villiers duke of Buckingham by Felton, it was proposed in the privy council to put the assassin to the rack, in order to discover his accomplices; the judges, being consulted, declared unanimously, to their own honor and the honor of the English law, that no such proceeding was allowable by the laws of England." But my friend Mr. Garrow has neglected to remark that the learned commentator confines himself to an exposition of the laws of England, and holds them up in glorious contrast to the laws of other nations. And he has also omitted to notice that the learned judge in the same paragraph mentions the adoption of torture by the French, and other foreign nations. In the discussion of this subject, therefore, my friend has unintentionally furnished me with a most material authority in my favour, namely, that according to Mr. Justice Blackstone although torture is unknown to the law of England, yet that it exists under the systems of France, Spain, and other countries; and if I can satisfy you, that by the instructions of sir Ralph Abercrombie, and which were ratified by his majesty, general Picton was empowered to administer the Spanish law, all my learned friend's observations as to torture being unknown to the law of England, and the like, are wholly irrelevant; this is not a question as to the law of England, but as to the law of Spain; and you will determine whether by that law, general Picton was authorized, acting upon the suggestion of the judge before whom the case was regularly investigated, to issue the order which has been given in evidence. And indeed the whole inquiry under the mandamus from this court proves, that the torture was notoriously applicable accord-

ing to the Spanish law. For example, Mr. Hayes, the counsel for the prosecutrix, puts this question, in examining one of his own witnesses, "Is it customary for a person at the time of being tortured, to have a defensor?" The witness replies "Yes, it is the custom." * Here we find, that the counsel for the prosecution admits the legality of torture, although he asks whether it is customary to assign a defensor to the sufferer. With respect to the nominating a defensor, it would be a mere waste of time to say a single syllable, because it will appear distinctly upon the evidence, that a defensor was appointed in that stage of the proceedings, in which the law directed that he should be appointed.

The object of torture is to *compel* a discovery; and it would be idle and absurd to argue upon the propriety of appointing a defensor, when the accused is to be put to the torture. He could have no influence as to the infliction or abandonment of the torture, nor would the judge require or attend to his opinions of the propriety or legality of its exercise.

Another witness † is asked, "are not tortures made use of by the law of Spain, and of what kind are they?" he describes them as effected by fire, water, burning the feet, and in various other modes. So that as far as this cause has hitherto proceeded, no doubt seems to have been entertained of the legality, according to the Spanish code, of the infliction of torture.

According to the evidence of Mr. Begorrat, the modes of torture are not absolutely defined by the laws of Spain; but it is left to the discretion of the judge to inflict the torture, according to the constitution and strength of the accused. "And," said he "as I did not consider the piquet in the gaol but as a very slight torture, in comparison to the tortures used in Spain, I ordered it, in preference, to Luisa Calderon." ‡

If, gentlemen, the testimony of men speaking upon their oaths is to be believed, and if in trying general Picton you are to be guided by that testimony, you must acquit him. The utmost extent of the evidence that can be relied on by Mr. Garrow, is, that for seven or eight years the witnesses did not know of the execution of such sentences; in other words, that they did not take place in Trinidad during the period in which all the cases in which they could be executed were carried by appeal to the Caraccas and to Madrid! But when closely interrogated, all my friend's witnesses admit, that in this particular instance the torture was applicable by the law of Spain. And this brings us to the question, whether general Picton was or was not bound to regulate his conduct by that law. Mr. Begorrat says, "There being no

Spanish lawyer in the country, I resorted to the different law-books which I could procure on the subject." * Let us therefore see under what circumstances general Picton was called upon to act at the time. Information was laid before him of the commission of a capital felony; suspicions fell upon Luisa Calderon; when examined by the judge, she prevaricates and conceals the truth; she afterwards discloses it, and it turns out that the offence was committed by a man with whom she was in the habit of carnal intercourse. Under these circumstances, general Picton is told by Mr. Begorrat, that a slight torture ought to be applied. Now, permit me to suppose, that previously to acting upon Mr. Begorrat's suggestion, the defendant had examined him upon oath as to the legality of its application. This criminal judge would have told the governor, that torture in such cases was conformable to the institutions of the Spanish law, and every other person conversant with the subject, whom the defendant might have thought fit to consult, would have delivered the same opinion. And in addition to this, he would have been told, that it was not merely an oral law, but that it was a written law, that there were books and treatises of authority recognizing it, and which were constantly referred to in the colony over which he presided as containing the laws and institutions by which his conduct must be guided.

Gentlemen of the jury, I have the satisfaction to inform you, that the very books to which the magistrate would have referred, are now in court; I hold one of them in my hand, and with the assistance of translations, you will fully understand their contents. And to establish their undoubted authority, we have availed ourselves of the knowledge and experience of his majesty's attorney-general, Mr. Archibald Gloster, who will appear in the witness-box, and from whom you will learn that they are constantly referred to for legal information by the judges of the colonial courts. I will not trouble you with a particular description of each of these books but the first to which I shall call your attention is entitled the *Curia Philippica*.

In the *Curia Philippica*, fol. 229, No. 2, it is laid down that "The question, or torment, is to be applied for confirmation or proof, there not being sufficient." In fol. 229, No. 4, it is stated, that "In the same crimes for which the question is applicable to the delinquent, in the same it is applicable to the witness who varies and prevaricates in his evidence, or who denies the truth, or who refuses to declare it, there being a presumption that he knows it; not being of those persons † to whom the torment cannot be

* Vide, p. 277.

† Francisco de Farfan. Vide, p. 301.

‡ Vide, p. 289.

Vide, p. 289.

† Persons exempted: A minor under 14, an old decrepid person, a pregnant woman, a woman forty days after parturition, and who

"applied, according to the law *de Partida*, and its Gregorian glossary. And for the same crimes in which the torment is applicable to the delinquent, in case an evidence of vile character and bad morals is admitted, he is to testify under torment, otherwise his evidence is of no validity."—Citing *Law de Partida*.

And in fol. 230, No. 12, "the torment that may be ordered to the delinquent for the crime, may also be ordered to force a declaration from his accomplice (if there be appearance or presumption that he had any) in crimes of religion, treason, that against nature, coining, theft, &c. as well as in all others which cannot be committed without accomplices, in all which those who are so may be admitted as evidences."—Citing *Antonio Gomes*.

In another book, intituled *Elizondo Practica Universal Foranse Juicio Criminal*, fol. 277, No. 12, vol. 1, it is said, that "Appearances to authorise the application of the question, should be weighty, apparent, urgent, and probable; and not light, doubtful, and equivocal; except in hidden crimes, and difficult of proof, such as theft, sodomy, crimes committed at night, coining, &c. in which the slightest are sufficient to authorise a departure from the ordinary forms of law, and the receiving of such proof as can be met with." And in the same treatise, fol. 275, No. 5, slight appearances are held to be sufficient to authorise the question against persons entrusted with the care of property in cases of theft. And you will remember that Luisa Calderon was the housekeeper of the person robbed, and had the charge of his property.

All these authorities derived from Spanish law-books, which have been long of high reputation, and in general use in the colonial courts, tend directly to the establishment of general Picton's defence. And let us for a moment consider the advantages resulting to my client from such support. This is not an exposition of the law of Spain by the *viva voce* testimony of men ignorant of its principles or unacquainted with its practice, and which might be adapted to any particular occasion. These venerable authorities are removed from all possibility of corruption; they declare the ancient established laws of the land, and cannot give a false representation in order to serve the turn of any particular person; they pronounce before you the same unchanged and unchangeable sentiments which they uttered when they first appeared before the world.

Thus, whether we advert to the parole evidence of the witnesses who have been called, or to the documentary proofs which are contained in the return to the mandamus and in the volumes now before me, we shall find it

suckles, a priest, soldier, knight, king's councillor, or magistrate.

unquestionably and universally laid down, that in such a case as that of Luisa Calderon, the person invested with the supreme civil and military authority in Trinidad, and sworn to administer the Spanish law, was fully justified in the infliction of the torture.

But, not to detain you, gentlemen, by going through these authorities one by one—

Lord *Ellenborough*.—Have you any precedents as to the degree of torture, and the mode of inflicting it?

Mr. *Dallas*.—There is a book of forms, which I shall produce; but the species of torture is not fixed by law, but is left to the discretion of the judge.

Lord *Ellenborough*.—Should not the judge have exercised that discretion? I am sorry to interrupt you, but I do so in order to draw your attention to what may constitute the most important difficulty.

Mr. *Dallas*.—I am much obliged to your lordship, because I wish to meet fairly every difficulty that can be started. I shall therefore address myself to what your lordship has pointed out.

With respect to the different species of torture, I shall beg your lordship's attention to this passage in the *Curia Philippica, Juicio Criminal*, fol. 230, No. 13, "The species of torment and the quality is not determined by the law, but left to the arbitrement of the judge, according to the complexion of the delinquent, the crime, and its appearances; though he should not make use of new torments, but the usual ones, such as dropping of water, small cords and pulleys, and of that nature."

It is laid down in the same book, * that "There are to be present at the torment only the judge, escribano, executioner, and person tormented. And it is to be applied in a secret place, without any other person being present, or in hearing."—*Law de Partida*. And that is the way in which the punishment appears to have been applied in the case of Luisa Calderon.

Lord *Ellenborough*.—Does not this mean the judge by whose arbitrement the torture was inflicted?

Mr. *Dallas*.—With great deference to your lordship, I apprehend not. But if it were so, that will only make way for a new line of argument, which I shall hereafter pursue.

Lord *Ellenborough*.—My interposition arises only from an anxious wish that no part of the case may escape you.

Mr. *Dallas*.—As to the persons present, the words of the law of Spain, as laid down in the authorities I have quoted, are satisfied; the judge, the escribano, and the executioner were

* *Curia Philippica, Juicio Criminal*, fol. 131, No. 16.

present. The question is, whether the judge, who must be present at the infliction, ought or ought not to be the judge who has the power of appealing to a superior authority. Now the passage before us relates to the common cases in which there is no power of appeal; in the present case the inferior judge could not carry any punishment into execution without the authority of general Picton; supposing the torture to be legal, it was only requisite that he should apply to the governor for permission to inflict it; and having obtained his permission, the criminal judge was the person who should be present at the infliction, and he was present in the case before us. Such is the law of Spain.

To draw these observations to a point, I submit to you, under his lordship's correction, that upon the first principles of natural justice, and by the general laws of every nation upon earth, as well as by the law of England, that which would be a sufficient defence against any charge in the country in which the alleged offence is stated to have been committed, must be a sufficient defence here; this principle is so clear, that it would be preposterous to cite authorities in illustration of it. And if therefore general Picton was bound to administer the law of Spain, and, as governor, was authorised to assent to the suggestion of Mr. Begorrat, his vindication is full and complete.

Gentlemen, as I have already stated, this indictment not only charges the defendant with the commission of an unlawful act, but also avers, that he committed it maliciously and without any reasonable or probable cause. I readily admit, that malice and the want of any reasonable or probable cause may be legal inferences to be drawn from the facts stated. I have endeavoured to impress upon your minds the difference between stating an action to be unlawful, and stating it to be malicious, as well as unlawful. A man may do that which is unlawful, but which, in the eye of reason and morality, is neither malicious nor criminal. Any man may, through ignorance or inadvertence, transgress the law, without being guilty of any crime; but no man can, through ignorance or inadvertence, do that which is malicious and consequently criminal; no man knowing that he is acting illegally can oppress another without being actuated by malice.

Gentlemen, I have divided this accusation into two questions, first, whether the action was unlawful, and secondly, whether (supposing it to have been unlawful) it was malicious, and without any reasonable or probable cause. Upon the first question, I have already addressed you at some length; I shall now trouble you with a few remarks upon the second. Malice is either express or implied. Express malice is a particular ill-will against an individual arising from some grudge or antecedent quarrel, revenge lurking in the mind and engendering a desire to injure the person

who is the object of it, and thereby to violate the laws of the land, whenever a fit opportunity for effecting this purpose shall present itself. The evidence usually produced in our courts to establish the existence of express malice, are declarations of animosity towards the injured party, threats uttered against his person or property, and the like. But in this case, I need hardly remind you, that there is not a tittle of evidence, upon which even the most remote suspicion of express malice can be founded. Here was no quarrel between the parties; here was no—

Lord *Ellenborough*.—You cannot go into this. The act, if unlawful, is presumed to be malicious. You must remember a cause which came on in this court, respecting granting ale licences, in which the point was thoroughly investigated. A magistrate acting by the advice of counsel refused to grant a licence, and although there was not only no proof of malice, but on the contrary sufficient evidence of his intention to do that which was right, the act being illegal, it was held to be the subject of an indictment. The argument which you are now stating, would be of the highest importance, if urged in mitigation of punishment; but to the question of guilty or not guilty it is wholly irrelevant.

Mr. *Garrow*.—When we state an intention to oppress, we mean merely to aver that the act oppresses.

Lord *Ellenborough*.—The question is, was the act authorized by the law of Spain or not; if the affirmative is established, the defendant must be acquitted. In an action for a malicious prosecution, the topics introduced by the learned counsel would be most material; but here they have not even the most remote application.

Mr. *Dallas*.—I must own, gentlemen, that the case had presented itself to my mind in a different point of view from that in which it is considered by his lordship:—

Lord *Ellenborough*.—Malice is the essence of an action for a malicious prosecution; here it is merely an inference of law from the facts of the case. But this does not remove you from any of your other grounds of argument.

Mr. *Dallas*.—Gentlemen of the jury, I was about to state, that in this case there is no evidence of express malice.

Lord *Ellenborough*.—Of mere malice towards the individual they have not offered to give evidence; it is not even pretended.

Mr. *Dallas*.—I was about to state what the observation just made by his lordship has rendered unnecessary, that no evidence of express malice has been given: that, therefore, must be put out of the question, it being admitted on all sides that there was no ill-will against the prosecutrix individually. And I understand it to be now laid down by his lord-

ship, that the words "maliciously" and "without any reasonable or probable cause," being coupled in every one of the counts with the word "unlawfully," they are to be taken as one allegation, the existence of malice being an inference of law necessarily resulting from the illegality of the act.

Lord *Ellenborough*.—If the act be unlawful, it is a sufficient ground of conviction, although the party may have erroneously thought he had reasonable and probable cause for committing it; being unlawful, he is chargeable for it by indictment.

Mr. *Dallas*.—I am now relieved from any discussion of this part of the case, because I understand his lordship to have ruled, that all inquiries as to actual malice are irrelevant, and that if the act should be held to be unlawful you must return a verdict of guilty upon this record.

Lord *Ellenborough*.—This is a case Mr. Dallas, full of important points—points of much greater moment than the last to which you have adverted; but still, if you have any authorities upon that, I shall most gladly hear you upon it.

Mr. *Dallas*.—My lord, in the case of *Miller v. Seare and others*,* lord chief justice de Grey drew the exact line of distinction upon which I am now insisting. In that case, which was an action of false imprisonment against certain commissioners of bankrupt, lord chief justice de Grey said, "It is certain that no man ought to suffer *criminally*, for an error in judgment; but it is equally just that he should make reparation *civilly*, for the damage which other persons have suffered by such his error."

Lord *Ellenborough*.—To assert that no man is to be considered as criminal, because he has not acted intentionally but ignorantly, would be leaving it to every man to say, "I will not inform myself, and in consequence of such negligence I shall not be deemed criminal." The subject was very much considered, while I was at the bar, in the case of some magistrates of Cumberland, where it was held certainly that they were not entitled to an acquittal, although their mistake originated in the best advice, and although there was every reason for a mitigation of their punishment.

Mr. *Adam*.—It was an application for an information, and the opinion of Mr. Justice Chambre was produced, which showed that the noble defendant acted upon that opinion *bonâ fide*, though against law.

Mr. *Dallas*.—Gentlemen, the case, as I now understand it, is confined to the questions, whether torture was in this instance applicable by the law of Spain? and whether, sup-

posing general Picton to have exceeded his authority and to have acted unlawfully and erroneously, the situation in which he stood will not furnish a complete answer to the charges of this indictment? I contend, with submission to his lordship, that it will, upon these grounds. You will find from the evidence which I shall produce, that general Picton was the supreme criminal judge; and it has already been proved, that what he did upon the particular occasion was done in the regular course of judicial inquiry. An information is laid before the supreme criminal judge, who, by the law of Trinidad, is bound to institute an inquiry, which inquiry is referred to the ordinary and competent tribunal, and upon the report and suggestion of that tribunal (upon which he, as judge, is bound to proceed), he orders the infliction of the torture. The question is not whether he was, technically speaking, a judge; but whether he was clothed with that judicial authority which brings him within the protection of the law. I do not mean to say, that he was formally invested with the robes of office, and seated upon the bench of justice; but I contend, that he possessed all the powers necessary to give him that protection to which by the law of England a judge is entitled, while exercising his judicial functions. This doctrine is expressly laid down in the case of *Mostyn v. Fabrigas*, in which lord Mansfield said, "Nothing is so clear as that, to an action of this kind, the defendant, if he has any justification, must plead it; and there is no thing more clear than that, if the court has not a *general jurisdiction* of the subject matter, he must *plead to the jurisdiction*, and cannot take advantage of it upon the *general issue*. Therefore, by the law of England, if an action be brought against a judge of record, for an act done by him in his judicial capacity, he may plead that he did it as judge of record, and that will be a complete justification. So, in this case, if the injury complained of had been done by the defendant as a judge, though it arose in a foreign country where the technical distinction of a court of record does not exist, yet, sitting as a judge in a court of justice, subject to a superior review, he would be within the reason of the rule which the law of England says shall be a justification."* Many other authorities might be cited, but one or two only will be sufficient, without wasting your time upon others. It is laid down, † "that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a criminal matter, either upon a grand or petit jury." The law of England, therefore, with respect to persons in your situation, gentlemen of the jury, is this; if you were to proceed not merely erroneously, but even maliciously, no indictment could be main-

* 2 W. Blackst. 1141.

* 1 Cowp. 172.

† 1 Hawk. 349.

tained against any one of you, for it would be a sufficient answer for such person to say, "I acted maliciously, but when I did so, I was serving as a jurymen;" no jurymen for any thing done by him as such, even although he has acted maliciously, is subject to an indictment.

Now, gentlemen, what says the law of England, with respect to persons in the situation which general Picton held at the time of the transaction in question? In the same book to which I have already referred, you will find it laid down, that "as the law has exempted jurors from the danger of incurring any punishment in respect of their verdict in criminal causes, it hath also freed the judges of all courts of record from all prosecutions whatsoever, except in the parliament, for any thing done by them openly in such courts as judges."* I therefore submit—

Lord *Ellenborough*.—I take the distinction to be this:—If a judge, in the ordinary exercise of his jurisdiction commit an error, he cannot be prosecuted; but if he commit an error while acting out of such jurisdiction, he is not protected.

Mr. *Dallas*.—I am well aware of the necessary and important distinction which his lordship has pointed out. Where a juror or a judge acts maliciously, but within his jurisdiction, he will be protected, and no action or indictment will lie. Such is the difference between those who perform public functions, and private individuals. But even, with respect to the question of jurisdiction, I can state some very strong passages from lord Hale, where the whole doctrine is collected.†

Lord *Ellenborough*.—Some of these points are highly important, and make it very proper that this case should be turned into a special verdict.

Mr. *Garrow*.—We have not the smallest objection, my lord.

Lord *Ellenborough*.—I suppose, Mr. Dallas, you will be relieved from the difficulties of proving the Spanish law, which might otherwise embarrass you. To prove the written law of any nation, a copy of that law should be produced.‡ If I were sitting at Guildhall, and proof of foreign commercial regulations were necessary I should require an authenticated copy of those regulations.

Mr. *Garrow*.—I should be ashamed if in a public prosecution of such importance, I did not immediately fall in with your lordship's suggestion. I trust that I know what your lordship means, and I will not object to their proving that it is written in some Spanish law book. I should be extremely sorry to obtain a verdict in a case where any thing can be supposed to be shut out.

Lord *Ellenborough*.—If a book of this sort is produced, stating the law of Spain in such a manner that Mr. Garrow thinks it reasonably made out to be the law of Spain, there would be no difficulty in having it stated in the special verdict so to be.

Mr. *Garrow*.—Suppose some document should by-and-by be produced, which your lordship would not in strictness receive, yet if there be reasonable evidence of its containing a correct representation of the law, I shall consent to its being stated in the special verdict that such is the law of Spain. I take that to be what your lordship means.

Lord *Ellenborough*.—I should be disposed to go still farther. The text writers furnish us with their statement of the law, and that would certainly be good evidence upon the same principle which renders histories admissible. There is a case in which the history of the Turkish empire by Cantemir was received by the House of Lords, and received after some discussion; I shall therefore receive any book that purports to be a history of the common law of Spain. Mr. Garrow says he will not take a formal objection; you have the facts upon the evidence already given; I will now take down your evidence, and if there be any question of fact, I will put that fact to the jury, and you may frame the special verdict.

Mr. *Garrow*.—It will still be open to me to contend, that whatever the law of Spain may be, it is no defence to general Picton; I say he was not under the law of Spain at all.

Lord *Ellenborough*.—Then it will be open to you to contend upon that point to such extent as your case will admit.

Mr. *Dallas*.—Gentlemen of the jury, in consequence of the conversation which has taken place within the last five minutes, it will not be necessary for me to trouble you any farther. I understand, that the facts of the case are to be reduced to a special verdict; and whether there is any justification in point of law will be the subject of discussion hereafter.

My lord, we shall first put in the instructions from sir Ralph Abercrombie to general Picton.

Lord *Ellenborough*.—You take it up with the capitulation of the island?

Mr. *Dallas*.—We will take it up, if your lordship pleases, with the capitulation; we have the Gazette in which the capitulation is contained; after which we shall give in evidence, general Abercrombie's instructions, general Picton's commission, then his majesty's instructions, and so on.

EVIDENCE FOR THE DEFENDANT.

The articles of capitulation read from the London Gazette of March 27th, 1797, as follows:

* 1 Hawk. 350.

† 1 P. C. chap. 42.

‡ *Boehtlinck v. Schneider* 3 Esp. N. P. C. 58; *Millar v. Heinrick*, 4 Camp. 155.

ARTICLES OF CAPITULATION for the surrender of the Island of Trinidad, between his Excellency Sir Ralph Abercromby, K. B. commander in chief of his Britannic Majesty's land forces; his Excellency Henry Harvey, esq. Rear Admiral of the Red, and commander in chief of his Britannic Majesty's ships and vessels of war: and his Excellency Don Josef Maria Chacon, knight of the order of Calatrava, brigadier of the Royal Navy, governor and commander in chief of the Island of Trinidad and its dependencies, inspector general of the troops of his garrison, &c. &c.

Art. 1.—The officers and troops of his Catholic majesty and his allies, in the Island of Trinidad, are to surrender themselves prisoners of war, and are to deliver up the territory, forts, buildings, arms, ammunition, money, effects, plans, and stores, with exact inventories thereof, belonging to his Catholic majesty; and they are thereby transferred to his Britannic majesty, in the same manner and possession as has been held heretofore by his said Catholic majesty.

2.—The troops of his Catholic majesty are to march out with the honours of war, and to lay down their arms at the distance of three hundred paces from the forts they occupy, at five o'clock this evening, the eighteenth of February.

3.—All the officers and troops aforesaid of his Catholic majesty, are allowed to keep their private effects, and the officers are allowed to wear their swords.

4.—Rear admiral Don Sebastian Rieuz di Apodaca, being on shore in the island, after having burnt and abandoned his ships, he with the officers and men of the squadron, under his command, are included in this capitulation, under the same terms, as are granted to his Catholic majesty's troops.

5.—As soon as the ships can be conveniently provided for the purpose, the prisoners are to be conveyed to Old Spain; they remaining prisoners of war, until exchanged by a cartel between the two nations, or until the peace; it being clearly understood, that they shall not serve against Great Britain or her allies, until exchanged.

6.—There being some officers, whose private affairs require their presence at different places of the continent of America; such officers are permitted to go upon their parole, to the said places, for six months, more or less, after which period they are to return to Europe. But as the number receiving this indulgence must be limited, his excellency Don Chacon, will previously to

the British commanders, a list of their names, rank, and places they are going to.

7.—The officers of the royal administration, upon the delivery of the stores with which they are charged, to such officers as may be appointed by the British commanders, will receive receipts, according to the custom in like cases, from the officers so appointed to receive the stores.

8.—All the private property of the inhabitants, as well Spaniards as such as may have been naturalized, is preserved to them.

9.—All public records are to be preserved in such courts or offices as they may be now in; and all contracts or purchases between individuals, which have been done according to the laws of Spain, are to be held binding and valid by the British government.

10.—The Spanish officers of administration, who are possessed of property in Trinidad, are allowed to remain in the island, they taking the oaths of allegiance to his Britannic majesty, and they are further allowed, should they please, to sell or dispose of their property, and retire elsewhere.

11.—The free exercise of their religion is allowed to the inhabitants.

12.—The free coloured people, who have been acknowledged as such by the laws of Spain, shall be protected in their liberty, persons, and property, like other inhabitants, they taking the oath of allegiance, and demeaning themselves as becomes good and peaceable subjects of his Britannic majesty.

13.—The sailors and soldiers of his Catholic majesty are, from the time of laying down their arms, to be fed by the British government, leaving the expense to be regulated by the cartel between the two nations.

14.—The sick of the Spaniard troops will be taken care of, but to be attended and to be under the inspection of their own surgeons.

15.—All the inhabitants of Trinidad shall, within thirty days from the date hereof, take the oath of allegiance to his Britannic majesty, to demean themselves quietly and faithfully to the government, upon pain, in case of non-compliance, of being sent away from the island.

Done at Port d'Espagne, in the Island of Trinidad, the 18th Feb. 1797.

(Signed) (L. S.) RA. ABERCROMBY.
(L. S.) HENRY HARVEY.
(L. S.) JOSEF MARIA CHACON.

The following document was then put in and read:

Head Quarters, Trinidad,

1st March, 1797.

Sir;—Lieutenant colonel Maitland having laid before me your letter and paper, containing notes, relative to the office of chief magistrate, which is continued in you, in consequence of the proclamation issued for the maintenance of the former laws of the colony, until his majesty's pleasure is known:

I have the honour to return you such answers as the occasion calls for, directing you, at same time, to consider this letter as your sufficient authority for acting according to the directions contained in it.

As it has been necessary to remove the person *who filled the office of auditor and assessor*, and that no proper person can be at present found to succeed him, you will in all civil causes, previously convene three of the most intelligent and upright men in the colony, or consult any able lawyer, and having received their opinion upon such points as you want, proceed upon their judgment, and give sentence in the case.

John Nihell, esq. appointed alcalde, and to execute the duty of auditor, for the time being in Trinidad.

In criminal causes, an appeal lies to the governor.

With respect to the chief magistrate's salary, I am sensible of the propriety, and even necessity of making a just provision on this head: although it is my wish, as much as possible, to reduce fees in general, yet certain limited ones will be authorized. Lieutenant colonel Picton will be directed to ascertain the amount of what these may be, and such addition shall be made as is proper. At all events, you may rest assured, that a complete allowance shall be paid you for your service to the public.—I have the honour to be, sir, your most obedient humble servant,

(Signed) RA. ABERCROMBY, L. G.
Commander in chief.

TRINIDAD.—I certify the above to be an exact and true copy of a letter received from sir Ralph Abercromby, the original of which is in my possession.

JOHN NIHELL, Chief Justice.

Sir R. Abercrombie's instructions to the defendant were then put in and read as follows:—

Instructions to lieutenant colonel Picton, 56th regt., appointed commandant of the Island of Trinidad.

Art. 1st.—The articles of capitulation, the proclamations which have been made by the commanders in chief, and that moderation which has been the leading

features of the measures adopted towards this colony, are as far as is practicable to guide lieutenant colonel Picton's conduct. At the same time, he must have respect to the mixture of inhabitants, and their characters which call for great circumspection and for the quickest intelligence of what is passing in every quarter.

He will continue to assure the inhabitants that nothing more is expected from them than the preservation of internal tranquillity, that no one will be called upon to bear arms, or act against an open enemy, unless it be a voluntary act of their own.

2.—It has been determined to be expedient to maintain the former laws of the colony, used under the Spanish government. This, however, is not to prevent the commandant from removing any officer in the courts, or elsewhere, whose conduct may give general offence to the inhabitants or to himself.

3.—The force left to garrison the island consists of about British and foreign artillery..... 52
Queen's..... 500
Buffs..... 150
Hompesch's..... 300
Soters..... 40

—1042

Of these, the Buffs are only here for a time.

The staff consists of
Lieutenant colonel Picton, commandant, at 30s. per diem, being the same as allowed br.-general Moore, at St. Lucia, until his majesty's pleasure is known.
Capt. Clapham, 14th, his secretary at 10s. per diem.

Mr. Lacoste, resident commissary.

Mr. Collin, assistant to the deputy paymaster of the forces.

Lieut. Collins, 53rd regt. assistant in the quarter-master general's department, who is to do all duties in the barrack department, and 2 m. g's.

Capt. Boland, 38th—town major at 5s.—town serjeant at 1s.—a mate of the general hospital.

Mr. Diggins, who came as a guide, is to be employed in any way in which he can be most useful; to be allowed 5s. per day, a ration for himself, and a forage for a horse.

4.—The commander in chief leaves his warrant to lieutenant-colonel Picton, for convening general courts martial, including the authority to appoint a deputy judge advocate, *pro tempore*.

5.—*Defence of the Island*.—It is probable, that this colony will remain undisturbed; as there is no reason to apprehend an attack from any quarter, but from Old Spain.—In the event of an armament appearing, lieutenant colonel Picton must be active, to make the best

observations possible of their strength and intention: Sending off as soon as possible, a swift-sailing vessel, with an account thereof to the commander in chief; and if he can, a second, lest the first should be captured. He must do all in his power to oppose a landing; and to resist the progress of the enemy when landed. From the nature of the Spanish troops, great expectation may be formed of success, even against very superior numbers by an enterprising conduct; when their progress can be no longer opposed, he must take the best position he can, and endeavour to protract the siege, until the time when he may calculate upon being relieved. Having done all that his own judgment points out to be the duty of an officer upon such an occasion, he must make the best capitulation he can.

6.—Returns of the garrison are to be transmitted on the 1st of every month, to the adjutant-general. If no direct opportunity offers, they must be sent *via* Grenada, as the safest and speediest channel.

7.—Lieutenant-colonel Picton will avail himself of every safe conveyance to report the position of affairs to the commander in chief.

8.—A fast-sailing vessel will be left to be at the orders of lieut. col. Picton, to be dispatched, should any important intelligence or event require it.

9.—Lieutenant colonel Picton will make it his study to keep upon good terms with the commanding officer of the royal navy upon this station, and with the royal navy in general. This is a matter of consequence.

10.—Constant vigilance must be preserved at all the posts. The order and cleanliness of the troops cannot be too much attended to.

11.—The custom-house has been established; copies of the commander in chief's instructions to the superintendant are here given. The commandant is required to know, from time to time, that no fees, in any shape, are taken which are not authorized.

12.—In commercial maritime cases, the commandant will summon assessors from the most intelligent merchants unconcerned in the matter, to assist him in the award or sentence he may give. The proceedings in all these cases to be preserved in writing.

13.—Lieutenant colonel Picton is authorized to make small disbursements for secret services; to reward people for bringing intelligence, or for any particular instances of service rendered; it is evident that he must be discreet in the use of this power. The reward must be

proportioned to the rank of the person, and the service done.

Head Quarters, Trinidad,
1st March, 1797.

RA. ABERCROMBY, L. G.

Lord *Ellenborough*.—You should show that the law of Spain prevailed in the colony prior to the capitulation.

Mr. *Garrow*.—Not the law of Old Spain, but a code applicable to these settlements, relaxing very much the severity of the law of Old Spain.

Lord *Ellenborough*.—You have that code to refer to?

Mr. *Garrow*.—I cannot admit generally, that the law of Old Spain obtained, I may admit that the law of Old Spain obtained under certain qualifications.

Lord *Ellenborough*.—But then it is incumbent upon you to produce those qualifications.

Mr. *Garrow*.—Whenever they show that the law of Spain obtained, it will be shown to have existed under certain qualifications. For example, speaking generally, we should say Jamaica is governed by the law of England; but it would not be accurate to assert that the two islands are governed by the same laws. In like manner, in order to encourage cultivation, there was a particular code of laws applicable to Trinidad, which were much milder than those of Old Spain.

Lord *Ellenborough*.—You mean that the people were subjects of the king of Spain, and governed by the general law of Spain, except where that law was altered by the particular code applicable to Trinidad.

Mr. *Lawes*.—We know of no particular code framed for the island of Trinidad, or for any of the colonial dependencies of Spain, and therefore must resort to the laws of the mother country.

Lord *Ellenborough*.—There can be no doubt of their liability to the laws of Old Spain, and that they were governed by those laws, unless some other code is shown. It is said, that there is some qualification of the law of Spain, but it is incumbent upon the prosecutor to show that; I dare say there will be parol evidence of it. You will give such evidence as you think proper. Some gentleman's name was mentioned, I think Mr. Gloster.

Mr. *Dallas*.—Unfortunately, my lord, Mr. Gloster went to the island long after the capitulation. The evidence we offer is, that Trinidad was a Spanish colony, and therefore governed by the Spanish law. I do not know of any such law as that to which my learned friend has alluded, nor have I seen any thing like it.

Lord *Ellenborough*.—It lies with you in the first instance to give some evidence as to the law.

Mr. *Dallas*.—We have put in the instruc-

tions under which general Picton acted, and which refer to the Spanish law.

Mr. Garrow.—No; not to the Spanish law, but to “the former laws.”

Lord Ellenborough.—The laws of the colony used under the Spanish government.

Mr. Garrow.—I have a document in the defendant's own hand-writing, in which he professes to give a picture of all that relates to the island of Trinidad, and in which he says not that they are governed by the law of Old Spain, but that justice is to be administered conformably to the laws of the Indies, which, having been corrected and improved during many reigns, are considered to form a perfect code of jurisprudence for colonial government. He distinctly remarks, that the colony is not governed by the law of Old Spain; and this being so, it is incumbent on my learned friend to show that the application of torture is sanctioned by the colonial law.

Lord Ellenborough.—Have you any means of referring to that? Have you, Mr. Dallas, any difficulty in admitting that they were governed by the code of laws applicable to the Indies?

Mr. Dallas.—I have never seen or heard of the paper to which my learned friend alludes.

Mr. Garrow.—He goes on to say, that this island however was exempt, in most instances, from the general principle of colonial government, in order to increase its population by the settlement of natives of all countries indiscriminately. That in cases not specially provided for, the laws of the Indies were applicable. In fact, you have a special code granted by the king; and where a case arises which has not been provided for by it, you are referred to the laws of the Indies.

Lord Ellenborough.—Mr. Dallas, you must show the existence of some law, and on that law you must found your justification.

Mr. Dallas.—Perhaps the most regular way would be for us to go through our proof, and then we shall see what it amounts to.

Lord Ellenborough.—I should be sorry if you left your proof defective. I am afraid, that unless some admissions are made, you are not in a situation to proceed: it would be a great hardship that any mere form should prejudice the defendant; and I am sure it is the wish of the gentlemen who conduct the prosecution, that this question should be tried with the utmost possible fairness. If the conduct of the defendant was not sanctioned by law, he ought unquestionably to be punished; if it was sanctioned by law, however repugnant it may be to our feelings, he must be acquitted.

Mr. Dallas.—For the purpose of showing that it was sanctioned by law, I will produce some passages.

[The Exhibit F. was read: see it, *antè*, p. 444. After which the Exhibit G. was read: see it, *antè*, p. 446.]

Lord Ellenborough.—This does not contain any thing more than a recognition of the former law; he says nothing about the criminal law.

Mr. Garrow.—Yes, my lord, that in all criminal cases an appeal lies to the governor.

Lord Ellenborough.—That is, after judgment.

THE FOLLOWING EXTRACTS FROM HIS MAJESTY'S INSTRUCTIONS TO GENERAL PICTON, DATED JUNE 1, 1801, WERE THEN READ:

EXTRACTS from the King's Instructions to General Picton.

“5th. It is our will and pleasure, that, for the present, the temporary administration of the island should, as nearly as circumstances will permit, be exercised by you according to the terms of the capitulation hereunto annexed, in conformity to the ancient laws and institutions that subsisted within the same previous to the surrender of the said island to us, subject to such directions as you shall now or hereafter receive from us, under our signet or sign manual, or by our order in our privy council, or to such sudden and unforeseen emergencies as may render a departure therefrom absolutely necessary and unavoidable, and which you are immediately to represent to one of our principal secretaries of state for our information. But it is nevertheless our special command, that all the powers of the executive government within the said island, *as well civil as military*, shall be vested solely in you our governor, or in the person having the government of the said island for the time being, and that such powers as were heretofore exercised by any person or persons separately, or in conjunction with the governor of the said island, shall belong solely to you our governor, or to the person having the government of the said island for the time being; and it is our will and pleasure, that all such public acts and judicial proceedings which before the surrender of the said island to us, were in the name of his Catholic Majesty, shall henceforth be done, issued, and performed in our name.”

“7th. It is our will and pleasure, that, for the present, and until our further pleasure shall be signified, the same courts of judicature which subsisted in the said island previous to the surrender thereof to us, shall, for the present, be continued in the exercise of all the judicial powers belonging to them in criminal and civil cases, and that they shall proceed according to the laws by which the said island was then governed;

and that such judicial powers as previous to the surrender of the said island to us were exercised by the Spanish governor, shall be exercised by you, our governor, in like manner as the same were exercised previous to the surrender of the said island."

THEN GENERAL PICTON'S COMMISSION, DATED JUNE 1, 1808, WAS READ.

Lord *Ellenborough*.—You must show what is the description of an *alcalde*.

Mr. *Dallas*.—Yes, my lord; we shall call witnesses to that. We are now upon the question of the Spanish law; we have given in evidence the original instructions from general *Abercrombie*, the commission, and his majesty's instructions referring to the law of the island: I think it will be best to follow that up by calling witnesses to show what an *alcalde* is, then to produce the original commitment of this girl, and the representation to general *Picton*. We need not now read the evidence which occupied eleven days.

Lord *Ellenborough*.—That does not appear to have been communicated to general *Picton*.

Mr. *Dallas*.—Yes, my lord; the whole of it was laid before him; we can refer to it; I do not know that we need now read it at length.

Lord *Ellenborough*.—Only read that which precedes the commitment.

Mr. *Lawes*.—And the ultimate judgment.

Lord *Ellenborough*.—That is immaterial.

Mr. *Lawes*.—It is evidence that the defendant acted in a judicial character.

Lord *Ellenborough*.—He can only be affected by what he himself has done. He cannot be benefited or prejudiced in any way by the ultimate judgment.

Mr. *Lawes*.—The sentence was ultimately given by general *Picton* himself.

Mr. *Garrow*.—I have no objection to admit that, at any period my learned friend pleases to state, general *Picton* ordered *Carlos Gonzales* to be discharged from custody upon paying a certain sum of money, and being banished the island.

Lord *Ellenborough*.—There will be no difficulty in stating that judgment went so and so.

Monsieur *Michael Gourville* sworn.—Examined by Mr. *Lawes*, with the assistance of an interpreter.

When did you first go to the island of *Trinidad*?—In 1774. I was one of the first foreigners that settled in *Trinidad*.

How long did you continue there?—Until about two months ago, when I set out for this country.

Who was governor of the island when you first went there?—Don Manuel La Falques.

When did Monsieur *Chapon* become governor of the island of *Trinidad*?—I do not exactly recollect the time; he was governor eleven years.

Did you act in the character of an *alcalde* there, and of what description?—I was *alcalde* for one year.

Under whose government were you *alcalde*?—Mons. *Chapon*'s.

Were there different classes of *alcaldes* or only one?—There was a first and second class, but the jurisdiction was the same.

Had the governor any jurisdiction at that time concurrently with the *alcaldes*?—Equal with the *alcaldes*.

Lord *Ellenborough*.—Does he mean acting in the same manner as a judge, and hearing the same sort of causes?

Mr. *Lawes*.—Did they both act as judges, or was the sentence of the one appealed from to the other?

Lord *Ellenborough*.—They cannot have been the same; the governor had not only an equal jurisdiction with the *alcalde*, but a larger.

Witness.—They appealed in criminal cases to the royal audience of the *Caraccas*.

Mr. *Lawes*.—My lord, I believe it was not exactly as your lordship stated, at that time; I believe neither at that moment could execute the sentence.—Did they act concurrently over the same subjects?—No, they did not act jointly.

How were the sentences of either of them executed, and by what authority?—By the authority of the judge himself.

Mr. *Dallas*.—Every matter of police in the island would be executed from day to day upon the spot, but in cases of life or death they were sent to the *Caraccas*.

Mr. *Lawes*.—I wish to know, whether the *alcalde*, or the governor, could pronounce any sentence without an assessor?—They do, but they are responsible when they are not attended by a man of the law.

They could not pronounce the sentence without a man of the law?—If they do it they are responsible.

Under what authority were their sentences at last executed?—[The witness did not understand the question.]

Were their sentences at that time referred to the court of *Caraccas*?—I do not know whether they appeal now; but at the time general *Picton* was governor, it was impossible to do it.

I am not talking about this transaction, but whilst Monsieur *Chapon* was governor?—The appeal was always made to the audience of *Caraccas*.

Do you know how sentences were executed or enforced, when the appeal to the *Caraccas* ceased?—Trifling matters in questions of police were decided on the spot without reference.

Lord *Ellenborough*.—Are we talking of *Chapon*, under the Spanish law?

Interpreter.—He says, "in the time of *Chapon*, I have seen the governor inflict punishments of different natures by his own authority, such as flogging."

In what cases were those sentences in-

flicted?—Robbery in the streets, or high-way, or violence against a woman.

Lord *Ellenborough*.—You can refer to the law; the governor would not exercise the ordinary jurisdiction of the judge?

Mr. *Garrow*.—No, my lord, except in this instance.

Lord *Ellenborough*.—We must inquire into this: here is no subordinate authority; he is both the appellant jurisdiction, and the judge in the first instance; the interpreter and the witness must be both wrong.

Mr. *Dallas*.—What I understand him to state, is, that previous to the surrender of the Island, there were two alcaldes of equal jurisdiction; that the governor had a concurrent jurisdiction, but that they acted separately; neither interfered with the other in ordinary matters of police; but in questions that involved life and death, the appeal was from the sentences of either of those to the Car-racas.

Lord *Ellenborough*.—It is quite impossible; it is contrary to every thing.

Mr. *Garrow*.—I dispute the translation.

Mr. *Lawes*.—How had sentences, pronounced either by the alcalde or governor, been executed since the conquest?

Mr. *Garrow*.—The instructions state how it must have been.

Mr. *Lawes* repeated the question.

Witness.—There was a man of the law called an auditor, a magistrate.

What did that man of the law, called an auditor, do?—He was obliged to attend the judge on all occasions, and give his opinion upon points of law.

And to the governor?—The governor also.

Was this before or after the conquest?—Both before and after.

What was the duty of the *escrivano*?—He took down a note or account of all that was done or transacted.

Is there any difference between what is called the judge *lego*, and the judge *imperito*, and what is it?—The judge *lego* is established by law—the word *lego* is Spanish and means a lay magistrate.

What was a judge *lego*? was he a lawyer or not?—The alcaldes are not obliged to be men of the law; they are taken from the mass of the inhabitants.

When they are not men of the law, are they not called judges *lego*?—They are chosen by election.

What I want to know is, whether he is a layman, or a lawyer?—They are chosen from the mass of the inhabitants, they are elected.

If the alcalde is not a man of the law, who acts as his assessor?—If he has no one, he acts according to his conscience.

Does not the *escrivano* act as assessor to such a judge?

Lord *Ellenborough*.—You are asking him all this which must be subsequent to the arrival of governor Picton, because, before that time, under the old law, they had all these men.

If a positive law requires an assessor, he should have one; it is said, if he has not one, he acts according to his conscience. I shall not take this as the positive law of the country.

Mr. *Lawes*.—When do you first remember a lawyer being on the island?—On the arrival of Monsieur Chapon.

Do you know whether Mr. Justice Nihell was removed from his situation as chief justice, and when?—Five years ago; about a year after the conquest.

Was there any chief justice, or officer of that sort in the island till after the conquest, when sir Ralph Abercrombie appointed one?—Never any other than the two alcaldes.

Lord *Ellenborough*.—I have it down, no judge but alcaldes in the time of the Spanish government.

Mr. *Lawes*.—Has any other person been appointed chief justice since the removal of Mr. Justice Nihell?

Lord *Ellenborough*.—Where is his appointment? let us see what the description is.

Mr. *Garrow*.—He is described in this way: "Chief magistrate, chief judge, and auditor, during his majesty's pleasure, in and over the whole and every part of the said Island."*

Mr. *Lawes*.—Has any body been appointed to the office since the removal of Mr. Nihell?

Mr. *Garrow*.—He has not been removed.

Lord *Ellenborough*.—He says he has.

Mr. *Garrow*.—It is not the fact; he has ceased to act, in consequence of general Picton's orders.

Lord *Ellenborough*.—Then you may cross-examine him as to that.

Mr. *Lawes*.—Has any person been appointed in the place of Mr. Justice Nihell?—No.

Has Mr. Justice Nihell since sat in any other court, or in any other place, and what?

Mr. *Garrow*.—I must object to your proceeding on the assumption of his having been removed; it is not the fact; it is true he does not act, because general Picton quarrelled with him.

Lord *Ellenborough*.—Whether he was or not, you may ascertain by cross-examination.

Mr. *Garrow*.—He was appointed in writing, and his written appointment is before the Court;† I submit that his removal must be proved in the same way.

Mr. *Lawes*.—When did he cease to act as chief magistrate?—I was in England when Nihell was displaced, and therefore know nothing about it.

Who acted as judge of the Court of Consulado for the last five years?—There never has been one for the Consulado, which is an assembly of the commercial inhabitants who decide matters.

* See the Exhibit F. *antè*, p. 445.

† *Vide* p. 444.

Who acted as judge there?—The judge was appointed by the general.

Who was that judge, and when was he appointed?—Mr. Nihell.

Who was appointed judge of the Consulado, and when?—Mr. Nihell.

Lord *Ellenborough*.—Is the Consulado a civil or a criminal court?

Mr. *Dallas*.—A civil court.

Lord *Ellenborough*.—It is really trifling with the Court to be putting questions concerning this civil court, which cannot in any way affect the present case. You are abusing the indulgence which has been granted to you of having a special verdict. I have been most anxious to obtain every possible information respecting the criminal courts of Trinidad, to which alone our inquiries are directed; and much time has been wasted by these interrogatories about the Consulado, which turns out to be a civil court.

Monsieur *Michael Gourville* cross-examined by Mr. *Garrow*.

Did not Mr. Nihell continue in the Island until you came away?—Yes, he did.

Did he not continue to act as chief magistrate until you came away?—He was judge of the Consulado.

Did he not continue in the office of judge in the same manner as when he was first appointed?—No, I believe not.

Why so?—Because he was appointed only to the Consulado.

We learn the contrary from the written document which names him the chief magistrate. Before that nomination, did the governor, in the first instance, interfere with regard to prisoners and witnesses in cases which were before the *alcalde*?—Never; because the party that complained, had always a right to choose his own judge.

Were there at that time two *alcaldes*?—Yes, always.

Then, the party complaining had a right to go to whichever of those two he thought proper?—Yes, he had that right, or to choose the governor if he pleased.

In case he chose one of the *alcaldes*, did the governor then at all interfere?—No; the governor was forbidden to intermeddle.

I am speaking of complaints of a criminal nature?—There was no interference in either case.

Did you ever know, in the time of M. Chapon, any instance of torture being applied to persons either accused, or suspected of crimes?—Never.

Before the arrival of governor Picton in Trinidad, was there any instrument for the infliction of torture?—No; I never heard of any.

If there had been any instrument of that sort during the year in which you were yourself *alcalde*, must you not have known it?—Sometimes they tied the thumbs of criminals together.

Did you, during the year of your being in office, attend the gaol?—Yes.

Do you know the room in which the torture was applied to Luisa Calderon?—No, I do not know the room.

Lord *Ellenborough*.—That no torture was inflicted before general Picton became governor, is not contradicted: we have heard distinctly that no torture was applied during the year this witness was in office, and this has not been contradicted; if there is any contradiction, you will go on.

Mr. *Garrow*.—I like to take it from one of their own witnesses.

Lord *Ellenborough*.—There was no *practice* of torture; but if there was any such *law*, it must be shown.

Mr. *Garrow*.—Did you ever know an instance of tying the thumbs of a witness together?—No.

In what cases of criminality did they tie the thumbs?—People of colour, who had robbed them of trifling things.

A slight punishment for a small theft?—A slight punishment upon loose people of that sort, for a slight offence.

Do you remember the first introduction of torture by governor Picton?—I was not in Trinidad, I was in this country.

Do you mean to say you were absent from the Island, during the first part of general Picton's government?—I was there at the conquest, and remained there one year.

While you remained there, had the governor introduced the torture?—No.

As to the circumstance of tying the thumbs, did you ever know an instance of it, except in the case of people of colour who were slaves? Did you ever in your life know it done to a free person?

Lord *Ellenborough*.—We have ascertained the period when the torture was introduced.

Mr. *Dallas*, if you can show that there was any law of Spain applicable to the colonies which authorized torture, you had better do so. Your case now remains just where it was at the beginning, with this difference, they say, that the *alcaldes* had concurrent jurisdiction with the governor, but that if applied to, the case remained with him.

Mr. *John Nugent* sworn.—Examined by Mr. *Dallas*.

How long had you been in Trinidad on the arrival of governor Picton?—I was there in the year 1786, and I think he arrived in 1797; about eleven years.

During the whole course of that time, in what manner was criminal justice administered?—In my time there were three courts; there was the governor and the two *alcaldes* in ordinary, two judges who had courts of equal and concurrent authority.

Lord *Ellenborough*.—Had all three a concurrent jurisdiction?—They had.

Mr. *Dallas*.—In the case of a charge of theft, before whom did the trial take place?

—Before either, it was quite indifferent, any one of the three.

Supposing the party to have been found guilty, what happened then?—Then the sentence was sent to the royal audience of the Caraccas for confirmation or rejection.

So that the appeal was not from one to the other, but to the Caraccas?—There was no appeal from one of the three to the other.

But the proceedings took place before either, as it might happen, and the sentence was sent to the Caraccas?—Yes; the sentence was transmitted with the proceedings to the Caraccas, and in several instances the person tried was also sent.

Was there any such office as chief-justice before the conquest of the island?—Never.

Then it existed for the first time in the person of Mr. Nihell on his appointment after the conquest?—It did, by the appointment of sir Ralph Abercrombie.

Can you tell us what was the distinction between the judge lego and the judge imperito?—I believe the judge lego was the ordinary alcalde who was chosen out of the inhabitants of the island, and who was chosen by the cabildo.

Lord *Ellenborough*.—What is the cabildo?

Witness.—I take it to be a body corporate, something like the lord mayor and corporation of the city of London, but with much higher authority; indeed, to point out to your lordship what privileges and rights they have, they are called the illustrious—

Mr. *Dallas*.—The judge lego is appointed by them?—He is chosen by a majority of voices in the Cabildo.

Is he a lawyer by profession, or chosen indiscriminately from the different classes of society?—He is not by any means a lawyer by profession.

What is the judge imperito?—I conceive that to be the auditor; I suppose so; I do not know the term.

Mr. *Dallas*.—It is a common term; it is a Spanish term used in the law-books?—I do not know any thing of the Spanish.

Lord *Ellenborough*.—This, however, is a proceeding in the court of the alcalde, and has nothing to do with the chief magistracy.

Mr. *Dallas*.—Previous to the conquest of the island, trials took place before either the governor or alcalde, and proceedings were transmitted to the audience of Caraccas, and sometimes the party accused was also transmitted thither?—In some instances, I will not say often.

Were the proceedings always transmitted to the Caraccas before the sentence was carried into execution?—Before the sentence was carried into execution, but after it had been given.

Was there an appeal from the audience of Caraccas to the king and council at Madrid?—I believe there was, I always understood there was.

Had the judge lego any legal assessor?—

He always had during the Spanish government; there were always Spanish assessors; the governor appointed any one to be his assessor.

Was the *escrivano* an assessor to the judge?—Not at that time; but when the English government took place and there was no Spanish assessor, then the *escrivano* stood in the place of the assessor, and was the assessor of the alcalde.

At what time did you quit the island?—I quitted the island in July 1802.

Had Mr. Nihell before that time ceased to execute the office of criminal judge?—I do not know that he had the office of criminal judge particularly; there was no such office; I believe he was called chief judge.

As chief judge, had he criminal jurisdiction?—I conceive he had; in truth it was an office so new, that it was little known there; I believe the reason why sir Ralph Abercrombie appointed him was, that he was alcalde at the time of the conquest, and then sir Ralph Abercrombie appointed him chief judge.

Lord *Ellenborough*.—Do you know the fact of his having exercised criminal judicature?—I do not.

Mr. *Dallas*.—In what capacity had he acted for some time before you left the island?—He acted under that commission of sir Ralph Abercrombie.

Lord *Ellenborough*.—Nihell was not applied to as criminal judge in these proceedings, and how therefore can you make his jurisdiction applicable to the question before us?

It is incumbent on you to show that the defendant's conduct was agreeable to the forms and usages of the island, and that upon application being made to the governor, he was authorized to award the infliction of torture. Nihell does not seem to have been at all connected with this transaction, and whether his was a criminal or a civil jurisdiction is altogether immaterial, seeing that he exercised none upon this occasion.

General Picton having, in a certain stage of these proceedings, taken upon himself to direct the infliction of torture, is bound, in order to substantiate his justification, to show that his conduct has been consistent with the regular course of legal procedure in such cases.

Mr. *Dallas*.—After the cause had been sent to Caraccas, and after the sentence had been pronounced, was it sent back from the Caraccas to the island to be carried into execution, if they approved of it?—It was.

So that the sentence was not executed till the court of appeal had confirmed it?—No.

Mr. *John Nugent* cross-examined by
Mr. *Adam*.

How long did you remain in the island after the conquest?—From 1797 to 1802, five years.

Previous to 1797, do you recollect torture being administered in any case?—I do not.

Do you remember the introduction of any instrument of torture into the island subsequent to 1797?—No, I do not recollect any instrument of torture, but I always understood the Spanish laws authorized it.

Lord *Ellenborough*.—We have that fact already; I will give you full leave to go into it if you can make any thing of it.

Mr. *Garrow*.—We have proved there was no real law.

Lord *Ellenborough*.—You have proved enough to raise the strongest presumption against the existence of such a law of torture, and throw it upon them to prove it did exist.

Archibald Gloster, esq. sworn.—Examined by Mr. *Dallas*.

How long have you resided in Trinidad?—From the 3rd January, 1803.

Do you hold any official situation in the island?—I do.

What is that situation?—His majesty's attorney-general.

How long have you held that situation?—From 15th October 1802, when my warrant was signed by the king.

Do you hold any other situation?—Yes, I am a member of his majesty's council.

In your situation have you had occasion to consult the books of authority in the Spanish law?—I cannot say I am conversant with the Spanish law; I never made it my study; I have had Spanish books brought before me in the privy council, and laid before me as being books of authority.

Has the council acted upon them?—I conceive they have.

Mr. *Garrow*.—This gentleman does not state himself to be competent to speak upon the subject; he had certain books laid before him, upon which he acted, without knowing whether they were books of authority.

Lord *Ellenborough*.—You may cross-examine him by-and-by; he adopts these books as containing the law of Trinidad; he received them as containing the law of Trinidad.

Mr. *Garrow*.—If he was asked whether they contained the law of England, he might answer in the affirmative with as much reason.

Mr. *Dallas*.—Did the courts act upon these books?—I so seldom went into the courts of the country, that I cannot say. I have referred myself to one or two books which they consider as authorities, and which are so looked upon in the offices of the *alcaldes*, the judges; I have seen the books upon the table, and seen them turning them over.

What are those books?—The *Bobadilla*, a very old book, but there is a new edition of it lately published, which is a practical book; *Elisondo* is another, and *Curia Philippica*. *Elisondo* is like *Tidd's*, *Sellon's*, or *Impey's Practice*.

Are they considered as law by Spaniards

resident in the island?—Yes, I mentioned a strong circumstance that they were cited before me as a member of his majesty's privy council.

They were cited and referred to for you to act upon?—They were referred to and the members of the council returned them with a report annexed upon the authority of those books.

You believe them to be authentic?—Certainly I do.

Archibald Gloster, esq. cross-examined by Mr. *Garrow*.

I should hardly suppose I was correct in understanding you to say you never studied the Spanish law?—Never; I said I was not skilled or versed in it.

You do not pretend to know more of it than we who have passed all our lives here?—I have not perused them as a student, or as a person would who intended to practise by them.

Have you read them as a matter of science or study?—No.

Are they translated into English?—No, I believe not.

I take it for granted you are familiarly acquainted with the Spanish language?—No, not familiarly; I can translate it with the assistance of a dictionary when I wish to look into one of the Spanish law books, or I would get a friend to translate it for me.

Have you been speaking to us now of all the books of authority that have fallen in your way on the subject of the Spanish law, as applicable to the government of the colonies?—No.

Do not you know, on the contrary, that there is another expressly and exclusively applicable to the colonies which you have not named? what think you of the *Royal Schedules*?—What? the *Schedule* published by the Spanish Court?

Yes, which contains the "Regulations for the Population, and the Commerce of the Island of Trinidad?" I dare say I have translated that pretty near, though I am not a Spaniard; have I made a tolerable hit for the first time as a dipper?—This is a code which had not fallen under your experience?—Yes; I was perfectly aware of it, it is the *Royal Schedules*.

But it did not occur to you to mention it—which contains the rules for the population and commerce of the Island of Trinidad; there is another book which is called *Recopilacion de Leyes*?—Yes; I know that book perfectly.

It is a collection of laws respecting the Indies?—Yes; royal letters and ordinances of the Indies.

You conducted this cause for general *Picton* in Trinidad, I believe? You examined his witnesses, and cross-examined those on the other side?—I attended as his friend.

It may have occurred to you to consult these

two books, the *Schedula* and the *Recopilacion*?—I do not know that I have particularly.

Is there one single syllable from the beginning to the end, that justifies inflicting torture in any one of the Spanish islands?—I do not know that there is.

Upon your oath, do you not know there is not?—Upon the oath I have taken, I do not know that there is not.

Those are the books used in the island, as the law of the island?—I do not know, except the general law.

When we have an express law for the colony, you must not tell us it is the general law of the state?—I believe from my memory, there is in that very book some reference to the general law of Spain.

Mr. *Garrow*.—No doubt of it—I will tell you what that reference is. Where there is no remedy for a particular case, and a new case shall arise, then they apply to the general law of Castile.

Lord *Ellenborough*.—Is there in that book any law of Trinidad to regulate the treatment of contumacious witnesses, or of witnesses guilty of prevarication? Does it state the treatment of witnesses who are contumacious?—I do not know that there is, or that there is not.

Mr. *Garrow*.—How long have you been in Trinidad?—Only since 1803.

Lord *Ellenborough*.—You do not found yourself on that book, Mr. *Dallas*?

Mr. *Dallas*.—No, my lord; we found ourselves upon the books we put in as containing the general law of the island. I shall now put in the books in general use in the island, and which Mr. *Gloster* has mentioned were the books cited as authorities in the island. We will first of all read an extract from *Curia Philipica*, p. 229. We have a translation upon the depositions, that may perhaps save time.

Mr. *Garrow*.—I am told, that instead of this being the text law of Spain, it is the comments of some person upon the law, which comments may be absurd.

Mr. *Dallas*.—It is written by a person who held the office of criminal judge for a considerable length of time.

The Title of the Book read.

“A code of laws in a first and second volume; the first divided into five parts, wherein is briefly and compendiously treated, decisions in the civil criminal ecclesiastical and secular judicatures, with the determinations and opinions of lawyers; useful for judges and advocates:—the second volume divided into two parts, and three books, wherein is treated the affairs of commerce and inland government; useful to merchants and professors of jurisprudence.”

THE FOLLOWING EXTRACTS WERE THEN READ.

Curia Philipica, fol. 229, No. 2.—“The

question or torment is to be applied for confirmation, or proof; there not being sufficient.”

Curia Philipica, fol. 229, No. 4.—“In the same crimes for which the question is applicable to the delinquent, in the same it is applicable to the witness who varies and prevaricates in his evidence, or who denies the truth, or who refuses to declare it, there being a presumption that he knows it; not being of those persons to whom the torment cannot be applied, according to a law *de Partida*, and its Gregorian Glossary. And for the same crimes in which the torment is applicable to the delinquent, in case an evidence of vile character and bad morals is admitted, he is to testify under torment; otherwise his evidence is of no validity. (*Law de Partida*.)”

Curia Philipica, fol. 230, No. 12.—“The torment that may be ordered to the delinquent for the crime, may also be ordered to force a declaration from his accomplice (if there be appearance or presumption that he had any) in crimes of high treason, coining, that against nature, theft, &c. as well as in all others which cannot be committed without accomplices, in all which those who are so may be admitted as evidences. (*Antonio Gomes*.)”

Curia Philipica, fol. 231, No. 6.—“There are to be present at the torment only the judge, escrivano, executioner, and person tormented; and it is to be applied in a secret place, without any other person being present or in hearing. It is thus expressed in a law *de Partida*.”

Mr. *Dallas*.—These are all the extracts I propose to read from the *Curia Philipica*. We shall next read some extracts from *Bobadilia de la Politica*.

Lord *Ellenborough*.—With reference to the passage last read, I wish to be informed, whether there is any description of the judge who ought to be present. Does it appear whether the judge who tries the cause is intended?

Mr. *Dallas*.—No, my lord.

Lord *Ellenborough*.—It should be understood that these books are to be produced, in order that both parties may have access to them.

THE FOLLOWING EXTRACTS WERE THEN READ.

Bobadilia de la Politica, fol. 964, No. 22.—“In high treason, homicide, theft and robbery, and crimes of atrocious nature, suspicions being strong, and the accused hardened, learned lawyers are of opinion that unusual torments may be applied.”

Bobadilia de la Politica, fol. 965, No. 25.—“In applying the question judicially, though the criminal should die, or lose the use of his limbs, the judge cannot nor ought to be answerable for it, according to common opinion and a law *de Partidas*, which says:—

“If the judge order a man to be tormented, for any offence he may have committed, in

‘order to discover the truth, he cannot be answerable for any wounds the party may have received. And I well remember, that in the gaol of this court, an assassin died under torment, and another had his arm broken, without consequences.’”

Bobadilia de la Politica, fol. 962, No. 16.—“In notorious, concealed, and atrocious offences, charged against wicked persons of evil fame, if the judges order the question or torment upon slight evidence or suspicion, and in the information or summary mode without communication to the accused, as in the common opinion, they shall be held exculpated in *residencia*; though *Paris de Puteo* says, that it is only allowable to superior judges and not to inferior ones. But I know that the contrary is the practice; and in 21 years that I was corrigidor and judge, I always practised it in such cases; and though I was accused in *residencia* I was always acquitted. And in the superior council in the account that I rendered of the corrigidorship of Soria, they approved of the torment I had ordered to Sarzala and other robbers whom I had caused to be apprehended in Navarre and Arragon in the year 1773.”

Lord *Ellenborough*.—I believe I must strike that out; for it is by far too questionable.

Mr. *Lawes*.—The next is folio 959, No. 10.

THIS EXTRACT WAS READ AS FOLLOWS:

Bobadilia de la Politica, fol. 959, No. 10.—“If the action is for having committed any one unjustly to prison, I say, if the crime is of a serious nature, although the accused shall not have confessed it, he may not only be put in irons, but into the stocks and chains.”

Lord *Ellenborough*.—That is only by way of restraint. It is too remote from the subject before us; it is quite wide of the mark.

Mr. *Garrow*.—These books themselves are only received upon the evidence of a man who cannot read them, or make them out without a Dictionary.

Mr. *Dallas*.—The next authority I shall read is the *Colom*.

THE FOLLOWING EXTRACT WAS THEN READ.

Colom Tom. 1, folio 231.—“It is the part of the professional or graduated lawyers, to determine the appearances which are sufficient to authorise the torment, and not mine. But the question cannot be ordered by the ordinary judge or examiner, without consulting the superior tribunal.”

Mr. *Garrow*.—Mr. *Gloster* said, he never saw that book in the island.

Mr. *Dallas*.—These are all the extracts we shall read.

Archibald Gloster, esq. re-called.

Mr. *Lawes*.—Look at the first volume of the book called *Colom*. Is that a book of authority in the island of Trinidad?—Upon my

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word, I cannot say. To the best of my recollection, I think I have seen this book in the offices of the *escrivanos*.

Have you seen it there among other books they have recourse to, in the execution of their duty?—I think I have.

Mr. *Garrow*.—As instructions to a notary.

Mr. *Lawes*.—It is a practical book, certainly.

Lord *Ellenborough*.—There should be somebody to accredit it as a book of some acceptance in the country.

Mr. *Dallas*.—It appears to have been printed at Madrid in 1795 with the royal licence—*Cum Privilegio*.

Mr. *Garrow*.—This author is an *escrivano*; he describes himself as an *escrivano*, with many other pompous titles; and having collected all the cases that had passed through his office, he has written this book for the information of some of his brother *escrivanos*. Suppose *Payne* the constable had written a book upon the office of constable, would that be considered a book of authority?

Mr. *Dallas*.—This is a book of the same description as *Impey's Practice*, which we all take as our guide.

Lord *Ellenborough* (to Mr. *Gloster*).—You saw this book in the island?—Yes, I think I did.

Lord *Ellenborough*.—Then it stands on the same footing as the others.

Mr. *Garrow*.—Very much so, my lord.

Mr. *Dallas*.—War having broken out between England and Spain since this transaction took place, the present relative intention of the two countries places us under peculiar difficulties.

Lord *Ellenborough*.—I am ready to take it with all its defects.

Mr. *Lawes*.—I am now going to put in another practical book, something like our *Crown Circuit Companion*. (to Mr. *Gloster*) Is the *Elizondo* a book of authority?—Yes, it is: I mentioned it before.

Mr. *Lawes*.—We only wish to have the form of the petition for the infliction of torture.

Mr. *Gloster*.—I cannot say that I can translate it, because of the number of legal terms.

It was read by the Interpreter as follows:

Elizondo Practica Universal, fol. 273.—“A petition requesting torment on the ground of defective proof. T. in the name of R. In the cause that in my behalf is prosecuted against D. for, &c. I declare that the proofs for evidence being seen by your honour, brought forward in my behalf, that you will be pleased to order an infliction of torture on the said D.; it being but justice, and, by carrying into execution, a favourable result may happen.”

Mr. *Dallas*.—We will now proceed to the evidence under the *mandamus*. We shall first read the Act of Process in consequence of the information laid before general *Picton*, his

ordering the commitment of Luisa Calderon, and referring the cause to Mr. Begorrat.

THE ACT OF PROCESS WAS READ.
[See it p. 328.]

Mr. Dallas.—If your lordship pleases, we will now take the depositions in order as they are numbered, and they can be entered as read.

Mr. Garrow.—I doubt whether they can be received; it does not appear that these were ever communicated to the defendant, and that he acted upon them.

Mr. Dallas.—Yes, they were.

Lord Ellenborough.—I understood that they meant to prove such communication; you may as well lay the foundation now, Mr. Dallas.

Mr. Lawes.—It does appear from Begorrat's Act,* that all these proceedings were laid before the governor, previous to his signing the order.

Lord Ellenborough.—That proves that something was laid before him. Whereabouts do you find the signature of general Picton?

Mr. Garrow.—To the order for inflicting the torture.

Mr. Dallas.—We now, my lord, mean to read the depositions.

Mr. Garrow.—As there is to be a special verdict, I may perhaps save a good deal of time. I apprehend that their object in proposing to read these depositions is, to show that there was strong suspicion that Luisa Calderon must have been concerned in the robbery; that is certainly the result to be obtained from the depositions; and I have no objection that my learned friend should so take it, or that any depositions, prior to the signature of general Picton, which he may think will conduce to that end, should be entered as read. If, upon forming the special verdict, they omit any which it may by us be thought material to insert, your lordship will give us leave to insert them?

Lord Ellenborough.—Certainly; but you must be very guarded, for there are some which are extremely trivial.

Mr. Garrow.—Some there are, which are neither evidence, nor any thing like it.

Lord Ellenborough.—I press this upon you, because, if it be not attended to, the special verdict will be sent back to be corrected.

Mr. Garrow.—If it should become necessary, your lordship will, I dare say, allow us to have the use of your notes?

Mr. Dallas.—That being understood, I believe we have nothing more to trouble your lordship with.

Lord Ellenborough.—I have made a note that, on the requisition of either party, any deposition or document, which is legal evidence, is to be inserted in the special verdict.

Mr. Garrow.—My lord, I propose to call a witness to show that the island is governed

by the Recopilacion; they never resort to the laws of Old Spain, but where the code of the Indies does not apply.

Lord Ellenborough.—I understand you, that where the Recopilacion, which they referred to in preference to the law of Spain, is silent, they may refer to the law of Spain.

Mr. Garrow.—We put it more strongly: we put it, that the law binding upon a Spanish colony is the Recopilacion, although there may, perhaps, be an extreme case, which may render it necessary to resort to the law of Old Spain.

Lord Ellenborough.—You recollect it has been sworn by this gentleman, that *that* is the rule; but it will be for the jury to say whether they are satisfied that the evidence of Mr. Gloster is conclusive.

Mr. Garrow.—It is very important to bear in mind, that the date of Mr. Gloster's knowledge of the laws of Trinidad commences in 1803, long subsequent to this transaction; and that he did not know of these books being in existence at the time this circumstance occurred. I think it stands so at present; but we had better have that ascertained.

Mr. Gloster re-called.

Mr. Garrow.—When did you first arrive in Trinidad?—On the third of January, 1803.

Previous to that date you did not even know of the existence of those books?—No, for my visits to the colony previous to that, were only for a week or ten days and not more.

You did not know any thing more of them than if they had been books in the Persian language, which had never travelled out of their own country, and you had never travelled into theirs?—I did not; I had no occasion.

Don Pedro de Vargas sworn.—Examined by Mr. Harrison.

How long have you known Trinidad?—I have known it since the year 1803; I arrived, I believe, at the same time as Mr. Gloster.

How long have you known the Spanish West Indies?—Ever since I was born.

How many years have you been acquainted with them?—I was born in South America, where the "Regulations" and "West India Laws" are in force.

What was your situation there?—I have been in four situations; I was brought up to the law.

Lord Ellenborough.—You practised in the profession of the law?—Yes, as an advocate.

Mr. Harrison.—Where have you practised?—At Santa Fe, the capital of the new kingdom of Grenada.

Have you been in various parts of the Spanish West Indies?—I have been in several parts.

Enumerate those parts of the Spanish West Indies in which you have been?—I have been in the greatest part of the new kingdom of

* See it p. 340.

Grenada; in the province of Caraccas; in the island of Porto Rico; in the Havannah; in Cuba, and in New Spain.

Are you able to say, that you are acquainted with the laws of the Spanish West Indies?—I think I am.

You have studied them in fact as your profession?—Yes, I have.

Take that book, and state to his lordship and the jury, whether that is the book you consider as containing the law for the government of the Spanish West Indies?—I conceive this book contains principally the laws of the colonies of South America; this book principally respects the government of the West Indies.

Lord *Ellenborough*.—What is it called?—The Recopilacion of the laws of India, relating to South America, ordered to be printed and published by his Most Catholic Majesty King Charles the 2nd.

Mr. *Harrison*.—Are you acquainted with the contents of that book?—Yes; that is to say, more or less: I may have forgot part of them.

Is there any thing that justifies or alludes to tortures?—No, sir; according to my knowledge of it, there is not any thing.

Does your knowledge of the Spanish West Indies enable you to say whether torture is there exercised under the Spanish government, and considered as part of the law?—To my knowledge it never was exercised or practised in the province of Caraccas.

You are acquainted with the practice of the Spanish law in the new kingdom of Grenada?—Yes, in the province of Caraccas.

Is that the Caraccas to which the appeal lies?—Yes; Santa Fè was the capital of the kingdom of Caraccas, and is newly established within these few years.

Was it in Cuba?—I do not know, because I passed very little time there, only two months in the harbour of Cuba.

Was it in Porto Rico?—I have been more there—I never heard such a thing.

Did you, in any of the islands, or in any part of the Spanish West Indies, hear of the practice of torture upon any person, or by any person?—No, I never heard that it was practised.

Could it have been practised without your knowing it by some means or other?—I think it would have been known; it could not have been in general practice, I am quite certain of that.

Could they have put persons to the torture without it coming to your knowledge some way or other?—No, I do not believe they could.

Lord *Ellenborough*.—It could not have been the general practice without your knowledge? Certainly not, my lord.

Mr. *Garrow*.—Had they any instruments for inflicting the torture in any of the gaols or places of custody, for the purpose of inflicting it upon offenders?—No, I never saw any.

In your judgment as a lawyer, could torture be legally inflicted in the Spanish West Indies?

Lord *Ellenborough*.—I do not think that the question should be so put. You may ask him whether he knows any law that authorizes the practice.

Mr. *Harrison*.—As a lawyer, do you know any law that justifies the infliction of torture in the Spanish West Indies?—I think, if there was any deficiency in the law actually existing in the West Indies, for some particular crimes

Mr. *Garrow*.—The question which that gentleman has put to you is this: according to the law as you know it, could torture be legally inflicted?

Mr. *Harrison*.—Do you know any law authorizing the infliction of torture?—Yes; there is an ancient law of 1260, or 1266, or thereabouts (I am not precise in the date) which authorizes the infliction of torture.

Where is that law? It is the law of Partidas; it is a law belonging to Old Spain.

Then in the law of Old Spain there are parts that justify the infliction of torture in certain cases?—Certainly; but if you will give me leave to comment upon it, I will do so. One celebrated author of Old Grenada, in Spain, speaking of torture says, "the torture in the Spanish settlements was held in general abhorrence; and I do not think any body will endeavour to inflict it."

Mr. *Dallas*.—This is not evidence.

Lord *Ellenborough*.—Having been conversant with a great part of the Spanish West Indies, he does not know an instance of the torture having been inflicted; he says he has heard of the old law of 1260, but which has got into such disrepute, that it is held in abhorrence.

Mr. *Garrow*.—Did you ever know the law of 1260 acted upon, or considered as binding on any body in the Spanish West Indies?—No, I do not consider it as binding.

Lord *Ellenborough*.—Was it ever in your time acted upon, or considered as binding in the Spanish West Indies?—No, I believe not; the laws of Partidas are so old, and we have other laws.

Mr. *Garrow*.—You say that you found it in reading a treatise upon the subject; but that in practice it is not followed; though the laws of Partidas would justify the supposition of torture having been used?—Yes.

Lord *Ellenborough*.—Mr. *Dallas*, you should, by some means or other, show that it is the existing law: it is too much to found your case upon so old a book.

Mr. *Dallas*.—My lord, the observation would be strong if our case rested solely on a law so ancient as 1260.

Lord *Ellenborough*.—The question "what is the law that prevails?" must go to the jury independently of the other facts of the case. It will be for them to say, whether there was any law in force which authorized the infliction

tion of torture in the Island of Trinidad. That must be stated as a fact: I thought it would have been admitted one way or the other without contest; but as there is conflicting evidence, I cannot dispose of it, and it must therefore be left to the jury. We cannot find evidence; we must find facts; it must be disposed of, otherwise the verdict would be imperfect.

Mr. Dallas.—Then, if that be the case, we must give further evidence upon this point.

Don Pedro de Vargas cross-examined by Mr. Dallas.

You say you have practised as an advocate?—Yes.

For what length of time?—Two years.

Two years only. In what court?—In Santa Fé.

You practised for two years only, as an advocate in Santa Fé, and your whole experience is derived from your practice during that period?—I must tell you, that those who study the law, are obliged by the laws of Spain to study for the space of five years; after that they must practise two or three years; and after that they are examined in full audience; and after that, if approved of, they have a licence to practise; after I was approved of, I practised two years.

Then the extent of your experience, as far as practice is concerned, is those two years?—Yes.

You have produced a book, which you tell us contains regulations for the government of the Spanish colonies: Is there any part of that book which directs what the proceedings should be when a person is apprehended for theft? Turn to any part that directs what is to be done in a case of robbery?—I think I can produce some; but there are three volumes; it will be something difficult. You intend I should produce only one instance?

I want to know, whether those books contain any directions to the criminal judge, how to proceed in matters of robbery, or of criminal accusation?—I am not prepared for that; but, notwithstanding, let me see if I can find it.

Will you swear, that there is from the beginning to the end of those three volumes, a single passage that *forbids* the application of torture in the Spanish colonies in any case whatever?—In the Spanish colonies I believe there is nothing—not any law.

You will not swear there are in those three volumes any passages that directly forbid the application of torture in any Spanish colony?—It will be very difficult for me to have all the laws in my head, I think there is none, except for a slave.

When did you arrive in this country?—I arrived in 1799, I believe. I am not quite certain.

That was before the peace was concluded between France and Spain?—Yes, I arrived the first time in England in 1799.

Did you give in your name at the secretary of state's office, under the Alien act?—I think I cannot answer that question.

Lord Ellenborough.—You must not ask him that question. He may subject himself to penalties; I think it should not be put.

Mr. Dallas.—Did you at any time pass in this country by the name of Smith?—Yes, I did.

You passed not by your own name, but by the false name of Smith?—Yes, I was entered in the office of the secretary of state at that time. I believe lord Hobart was secretary for the colonial department; and it came to the knowledge of the secretary of state at that time, before the peace in 1801.

Have you been at any time employed by colonel Fullarton, in taking examinations against general Picton?—I believe not, I was not employed officially.

I repeat the question to you: upon your oath, have you not been employed by colonel Fullarton, to take the examination of different persons against general Picton?—I have been employed as an interpreter by colonel Fullarton, and gave him the assistance of my legal advice; he appointed me as his assessor.

Have you been employed by colonel Fullarton to take the examinations of different people against general Picton?—I was employed.

You were employed by colonel Fullarton as an interpreter, to take these examinations?—Yes.

Mr. Garrow.—There were persons who spoke the language with which you are conversant, and you assisted to translate what they said?—Yes.

Lord Ellenborough.—We will now proceed to the evidence collected under the Mandamus.

Mr. Dallas.—We thought it stood upon the Minutes; in consequence of which I stopped my address to the jury, which otherwise I should not have done.

Mr. Garrow.—When these depositions shall have been read, can the result of them be more than that there was strong reason to suspect that Luisa Calderon was implicated in the robbery?

Mr. Dallas.—This is quite a different point; this is as to the law.

The Examination of the Honourable St. HILAIRE BEGORRAT read—[*Vide antè*, p. 286.]

The First fifteen Questions and Answers on the Examination of FRANCISCO DE FARFAN read—[*Vide antè*, p. 299, 300.]

Lord Ellenborough.—There is no point made about her age is there?

Mr. Garrow.—No, my lord.

Lord Ellenborough.—It appears clear, that there was no assessor in the island.

The remainder of the Examination of FRANCISCO DE FARFAN read—[*Vide antè*, p. 300.]

Lord *Ellenborough*.—Do you, Mr. Dallas, call any parole evidence to prove torture to have been practised in any other parts of the Spanish settlements?

Mr. *Dallas*.—No, my lord; I have no other evidence.

Mr. *Garrow*.—Gentlemen of the Jury—

Lord *Ellenborough*.—Mr. Dallas was stopped, when a special verdict was agreed upon; I ought therefore now to hear him upon the contradictory evidence as to the law; if I hear you now, I thereby preclude Mr. Dallas from making any observations which he may think necessary upon that point.

Mr. *Dallas*.—I had not concluded my address, when I was stopped by the suggestion of a special verdict.

Lord *Ellenborough*.—It rests with you; but it must always be understood, that I cannot put down contradictory evidence.

Mr. *Dallas*.—I understood it was agreed to be a special verdict.

Lord *Ellenborough*.—Yes; but if there is a contradiction in the evidence it must be left to the jury to determine. Perhaps it will be as well that both parties should comment on the question, whether the law of torture did exist in Trinidad or not. The jury will then dispose of it one way or the other, and the special verdict will be framed accordingly.

Mr. *Dallas*.—Gentlemen of the jury, I can have no objection, under his lordship's direction, to take the course now marked out for me; and indeed I should, at all events, have been entitled to address you again.

Mr. *Garrow*.—As we are in this stage of the business, I think it will be as well if your lordship will add to your notes that Vallot* had been gaoler ten years, and that during his time there had been no torture, nor any instrument of torture, in the gaol.

Mr. *Dallas*.—Then the whole of his evidence must be read.

Lord *Ellenborough*.—You gave evidence by Vargas, and you ought to have followed it up then.

Mr. *Garrow*.—My lord, I stated that I had many witnesses to prove that no torture was ever practised; but as it is, I have no wish to have Vallot's evidence read.

Mr. *Dallas*.—Gentlemen of the Jury; The case is now confined to a single point, and, as I stated to you before, I have no objection to adopt the course chalked out for me by his lordship. But at all events I should most undoubtedly have been entitled to address you again upon a part of the case, I mean upon the evidence which my learned friend has adduced in answer to mine; for upon evidence of that sort, in any court and in any prosecution, it would have been open to me to animadvert.

Reduced as the case now is to a single

point, I will, under his lordship's correction, state what I conceive to be the only question for your decision—a mere question of fact, and involving no legal considerations—namely, whether, upon the evidence before you, you can upon your oaths declare, that by the law of Spain torture was not applicable in the island of Trinidad in any case, the circumstances of which corresponded with those of the case of Luisa Calderon; or whether by the law of Spain, the criminal judge could, in any instance, order the infliction of torture.

I confess, I thought that upon this point I had made out an extremely strong case in behalf of the defendant general Picton: I did not content myself with calling persons who had practised for a longer or shorter period of time in the Spanish colonies; but I produced before you the works of different authors—some being commentaries on the laws of Spain by distinguished practitioners of those laws, others containing decisions which had from time to time taken place; and I also established the important fact, that it was the bounden duty of those who were concerned in the administration of criminal justice, to consult these books as containing the rules by which their conduct should be regulated. You cannot forget that I called before you Mr. Gloster, who has been attorney-general of that island ever since the year 1803, and who has told you, that these are the books which, from his first connexion with the island, have been constantly resorted to by the advocates who practise, and by the judges who decide in the courts of Trinidad, as being the standing incontrovertible authorities according to which the law is to be administered. Nor do I think that such testimony will easily be got rid of by the observation that Mr. Gloster's experience commences only in 1803—a year after the torture was inflicted upon Luisa Calderon—for I apprehend that it will require more ingenuity than even my learned friend possesses (and he possesses as much as any man living) to persuade you that all these different volumes which state the application of torture to be strictly legal, and which contain the very foundations of the colonial jurisprudence, have found their way into the colony between December 1801, when this transaction occurred, and January 1803, when Mr. Gloster arrived in the island—a conclusion to which it is not in the power of my learned friend to lead any man possessing common sense. I place myself therefore upon this ground, which will firmly support me—that if Mr. Gloster, when he arrived there in 1803, found these books in the hands of members of the courts, and saw them daily referred to by magistrates administering criminal justice, it will be evidence satisfactory and conclusive to every reasonable mind that they were not then, for the first time, introduced into the island; but that for a long period antecedently to this particular transaction, they must have been daily consulted by all per-

* See his evidence *antè*, p. 278.

sons engaged in the administration of justice; and of this I am sure that no reasonable doubt can be entertained. The case therefore in point of proof stands thus: A great number of different books have been laid before you, published at various periods, some of very ancient, some of modern date, and one as recent as 1795. And what do we learn from them? That (as far as we can derive any light from those quarters to which, on such subjects we usually look for information, namely, the works of distinguished civilians writing upon the jurisprudence of their country) according to the unanimous declaration of these authors, by the law of Spain torture may be administered. What, then, becomes of the evidence of this gentleman (upon whose testimony I shall presently observe, as well as upon the circumstances under which he has this day presented himself before a court of justice) who tells you that he remembers an ancient law of Partidas, which passed in 1260, and would lead you to believe that no such thing as torture has been known, that the very sound of the word has hardly been heard in Spain since that period? I ask you, gentlemen, what becomes of an assertion so rashly hazarded, when you recollect the dates of all these successive authorities, which represent the continued law of Spain to be such as I have stated? I stand therefore upon this fact, and I call upon you, in the conscientious discharge of your duty, when your calm unbiassed decision is so material to general Picton, to proceed with the utmost caution, and to say whether I have or not proved to the satisfaction of every reasonable mind, that this law of the mother country applies even to its distant possessions and remote colonies; and that with reference to Spain itself, there is no foundation for that bold assertion which this witness hazarded, that the supposed legality of torture depends merely upon an ancient law of the year 1260, which has long fallen into desuetude.

All these authors, down to 1795, state that there are cases (and according to them the present is one) in which, by the Spanish code, torture may lawfully be inflicted. And such being the fact in respect of Spain itself, let us consider whether the case stands upon any different footing with regard to the colonies. We have proved as well by parole evidence as by the production of those very books which are the sources of knowledge, and to which the judges themselves must apply for information, that by the law of Spain torture may be inflicted upon criminals. Now can my learned friends turn to a single passage in which any distinction is even attempted to be taken between the colonies and the mother country? they have, indeed, endeavoured, by examining a witness to the contents of these volumes, to show that the rule which applies to Spain, does not apply to the colonies of Spain; but when I find it laid down as a general proposition, that in Spain the torture

is legal, and there being, in regard to the colonies, no exception which breaks in upon the general rule, this is sufficient to convince me that the law is the same in both places. But, strong as it is, my case does not rest even here. How is it affected by the examination of this gentleman, who, according to his own account, is a graduated advocate, and has practised two years, and whose experience is confined to those two years of his practice? he states that the law of Old Spain does not prevail in the colonies; and my learned friend says, that the books I have laid before you are trash; and that they are produced here for the purpose of misleading you; why? because he holds in his hand a compilation of laws which contains rules for the regulation of the Spanish colonies, and which lays down maxims for the conduct of those who are to administer the law in those colonies. Mr. Vargas tells us, that nothing with regard to torture is to be found in that book: I might say, be it so; and since nothing about torture is to be found in it, that book may be put out of the question altogether. But I am standing upon a general rule; and if that book which he has produced contains no passage in which an express exception to the general rule is to be found, the production of the book is a direct corroboration of my case.

You cannot, I am sure, have forgotten one question which I put to the witness who now sits before me. I called upon this experienced jurisconsult—this ingenious advocate—to declare whether, in this compilation of the laws of Spain, he could find any passage that prescribes the mode of proceeding in the case of a person charged as a principal or accessory in a robbery? He went from place to place; he turned the volumes over in confusion page by page; and he concluded his evidence without referring us to any text upon the subject! And I must say that my learned friend has adopted a most singular course for overpowering the testimony I have adduced, and in which I pointed out each page and passage bearing on the particular point; for three volumes have been produced to an advocate (not now practising in any court of any colony belonging to the Spanish empire) who cannot fix upon, or point out one single text, not only as to the matter to which he has been called, but even as to any other. But, gentlemen, you will remember that I put this further question to him “will you, upon your oath, undertake to say, that, torture being consonant to the general law of Spain, from one end of those books to the other, there is a single passage that prohibits it from being applied in the colonies of Spain?” He would not undertake to say there was. Then, I assert, that there is no evidence whatever delivered by him, that can be put in opposition to the evidence given on the other side; because our evidence is positive as to the prevalence of the system, and they have not cited a single passage from any authority, pointing out an exception to the general rule.

Gentlemen, Vargas, who appears now in the character of a Spanish advocate, has passed under another name—that of Smith; but under the circumstances of his situation, I scorn to detain you by any personal observations upon him; I will only remind you of his having been employed from time to time in going between colonel Fullarton and the witnessess. In a case so important to the defendant, and after the strong positive evidence of the general law of Spain, I ask, whether, upon the production of a book, out of which not a single passage has been read—upon this negative evidence, in direct opposition to all the positive evidence written and, parole which I have produced—you can conscientiously believe that the Spanish law did not sanction the application of torture in the case of Luisa Calderon?

I am sorry to have troubled you at so much length upon this single part of the case; but I trust it will be imputed to my anxiety that no material circumstance should escape you.

REPLY.

Mr. Garrow.—Gentlemen of the Jury; It is with extreme concern, that I feel myself called upon, at this time of night, to address to you any observations on the present most important case; but the manner in which, on the part of governor Picton, it has been thought proper that his defence should be conducted, and especially that speech which has lately been delivered, make it my indispensable duty, with reference not only to the prosecutor, but also to the honour and character of our country, to trouble you with some remarks upon the topics of which my learned friend's speech has consisted.

To me my learned friend has been, as he always is, extremely courteous; indeed he is the last man to volunteer harsh observations; and therefore nothing but the distress of his case could have urged him to treat the gentleman before me in the manner you have witnessed; I say "the distress of his case," because unless his lordship blots out of his notes, and you erase from your memories what this learned *jurisconsult*, as my learned friend denominated him, has stated, general Picton has not even the slightest shadow of defence. We will now, gentlemen, proceed to inquire what degree of credit does belong to this gentleman, and to examine the pretensions of that witness with whom my learned friend has the courage to contrast him.

Mr. Vargas tells us, that he was born in Spanish America, that he was bred to the profession of the law, and that he practised in that profession for two years. These two years, says Mr. Dallas triumphantly, comprise the whole extent of his experience; but I think my learned friend was unlucky in making this attack upon Mr. Vargas, whose qualifications as a witness were to be contrasted with those of Mr. Gloster, the attor-

ney-general of Trinidad, and counsel of the defendant. Let us compare their respective merits. The one is a man educated from his infancy in the laborious study of the laws of his country, and speaking the language in which those laws are written; like all his countrymen of the same profession, he was under the necessity of practising, for a considerable time, in the courts of inferior jurisdiction; he then underwent an examination before a full court, and on obtaining their certificate of his fitness, was authorized to manage the concerns of others, in which occupation he has been employed two years: having therefore had every means of investigating the authorities on this subject, he has given the account which you have heard, but which my learned friend has not stated with perfect fairness. Mr. Vargas did not say, that on consulting the books, no written law would be found, by which, in particular cases, torture could be inflicted in Old Spain; he said that the Spanish settlements in the West Indies were, at the cession of Trinidad to the British forces, governed by a separate code of laws, which we have put in, and which I showed to Mr. Gloster, and not by the laws of Old Spain. I observe it is printed by authority, in 1783, expressing itself to be a "Code for the Regulation of the Population and Commerce of the Colonies," published by the court of Madrid, as a code of laws by which their settlements are to regulate themselves. He says, that on looking into this, he finds no authority for the application of torture to any person, under any circumstances whatever; but being asked whether he knows any text that justifies the infliction of torture, he does not reply like a rash man, as my learned friend represents him to be, because a rash man would have said, there is no such text; but he says, I do recollect to have somewhere seen an edict of 1260, in which torture is spoken of as legal; but I state to you, as far as concerns the West Indies, that during the whole of my connexion with them, I have never seen or heard of the infliction of torture. He went on to say, that although this was formerly the law of Old Spain, yet even there the good sense of modern times, if it has not entirely abolished it, has nearly done so, and has made the principle of torture a subject of contempt and abhorrence. He did not state that the torture could not, in any case, be inflicted in Old Spain; but applying himself to the colonial law which he had studied, that he had never found any trace of its existence in the West Indies.

My learned friend designated Mr. Vargas by the words "this *jurisconsult*;" let us see what sort of *jurisconsult* has appeared on the other side. You have had Mr. Gloster—to do what? To disclaim any ability, to throw light on the subject, and to tell you that he cannot read even the title pages of the books put in! When desired to translate a passage, which from my acquaintance with the Latin

and French languages, I myself could have translated, he said he could not do so, because of the law-phrases contained in it. And this man, who cannot translate, without a dictionary, a single passage in the Spanish books, who never looked into the Spanish law, who cannot explain the meaning of a petition, no longer than the oath which my lord's crier when he called you into the box administered to you, this man is the *jurisconsult*, whose testimony is to send Mr. Vargas out of court, and upon whose authority you are to assert the existence of a law, authorizing the infliction of that torture which the unfortunate woman before me has suffered.

Let us see what Mr. Gloster's evidence is: does it make these books receivable? I am bound to say it does, because they have been received; but his lordship will forgive me, when I say, without fear of contradiction, that they are barely within the pale of evidence; for they stand upon no better support than this,—that they were seen in an *escrivano's* office in Trinidad, in 1803. This was at a time long subsequent to the cruelties of governor Picton—at a time when he was beating up for any authorities in which such a law might be discovered, in consequence of his having been called upon to make retribution for his misconduct—and then, this gentleman comes forth (who has been acting under the *mandamus* as the counsel of general Picton, with what propriety and decorum I leave it to himself to determine, he being attorney-general of Trinidad at the time) and says “I saw these books lying in the *escrivano's* office!”—I beg his pardon, he goes further, and says “I do think that once, at the council of which I have the honour to be a member, somebody did produce one of them, and quote something out of it, and treat it as an authority; not being able to read Spanish, I am myself totally ignorant, whether it is an authority or not, but I am ready to pour in upon you a wheelbarrow-full of such authorities, in order to make out a justification of the infliction of torture.” Is this, gentlemen, the way in which a defendant is to be justified in an English court of justice?

I shall demand of you a general verdict of Guilty because I am sure I shall satisfy his lordship that (although he kindly anticipated the possibility of there being some written law which might make this a fit case for a special verdict), there is nothing left for you to determine but the plain naked question, Guilty or Not Guilty, justified or criminal.

My learned friend tells you that his client may have been misinformed, and may have committed an error in what he believed to be the faithful discharge of his duty—

Mr. Dallas.—I put that hypothetically, on the supposition that it might ultimately be held that there was no such law of torture as he believed to exist, and upon which he acted.

Lord Ellenborough.—That should be left for a motion for a new trial.

Mr. Garrow.—My learned friend says, if you should be of opinion that there is no Spanish law to justify his client, that then, although his client was mistaken, he still is not responsible because he has acted merely according to what he considered the faithful discharge of his duty. My learned friend thinks, that the sufferings of this poor creature are as nothing, that the governor was misinformed certainly, and in consequence has been led into an error in what he believed to be the faithful discharge of his duty. Is this so? Let us see how he came there, what he was called upon to do, and why he was placed there by that excellent person, whose name has been mentioned by my learned friend, and upon whose memory it would be a libel to say he had left instructions the meaning of which could for a moment be mistaken. The instructions he received from general Abercrombie are plain and intelligible, the substance of them is, that until his majesty's pleasure should be known as to the laws by which the island should be governed thereafter, it should continue to be governed by the old laws; but it was stated that, as the island having become a British settlement, it might be extremely inconvenient for a British governor to conform altogether to the old laws, he was to govern according to them *as nearly as circumstances would permit*. My learned friend tells you that governor Picton was no lawyer, that he was no civilian, nor had he made the deep researches by which Mr. Attorney General Gloster has distinguished himself; but even if he had not these qualifications, he was an Englishman and governor of a British settlement, and before the island of Trinidad had been for the first time cursed with the introduction of an instrument of torture, he should have asked, what law English or Spanish could justify him in making this unhappy creature his victim. Having an English heart in his bosom, he should not have wanted any assessor or *jurisconsult*, but he should have made that his adviser, and should have followed its dictates.

But, gentlemen, how has he been acting in this business? and who is it that has imposed upon him? It is said, “You do not see him acting with malice towards this particular individual;” that is not the thing, but it is a general malice towards the whole human race, resulting from a depraved heart, which—

Mr. Dallas.—I must take leave to interrupt my learned friend. I understand, my lord, that, whatever points may be made hereafter, the single question now is, Whether by the Spanish law torture could or could not be inflicted; and I therefore submit that my learned friend is not entitled to address the jury upon the general question of Guilty or Not Guilty.

Mr. Garrow.—Am I not entitled to a general reply?

Mr. Dallas.—I apprehend the only question now is, what was the Spanish law?

Lord Ellenborough.—If the jury should find that there existed no Spanish law authorizing the infliction of torture, there must be a verdict of Guilty. If the jury should be of opinion, that there was such a law, a question will arise as to how far the defendant has conformed to that law; and upon that question, certain facts will be found by a special verdict. But if there is no such law, there is no foundation upon which the defendant's justification can rest, and a general verdict of Guilty must be recorded. The particular question now is, as to the existence of the law, and to that these topics are, perhaps, not of very great importance; but I think I cannot correctly restrain Mr. Garrow, because this fact, according as the jury shall find it, will lead either to a general verdict of Guilty, or to the special verdict for which consent has been given. There was one observation which may have been thought material; namely, that the charge of malice is not tenable under this indictment; but every thing done contrary to law is understood to be done *malo animo*, and malice is implied.

I think that the counsel for the prosecution is entitled to a general reply.

Mr. Garrow.—I confess, gentlemen, I was much astonished at the interruption I have received from my learned friend, for I was commenting upon that very part of the case on which his lordship in vain endeavoured to stop my learned friend. I know that I have the right to a general reply, although I do not think it necessary to avail myself of that right in its full extent. I am not talking with reference to a *special* but with reference to a *general* verdict, and you will remember that I protested against the former, and submitted to his lordship that there was nothing for decision, but the plain, naked, dry question, guilty or not guilty? justified or criminal?

Then, gentlemen, how does this question stand? This English governor could not by the law of England apply, or justify the infliction of torture; but if he can show you that there is any Spanish law which sanctions the application of torture under circumstances similar to those of the case of Luisa Calderon, I admit that he may establish a justification. If, however, you can find no law from the foundation of the Spanish settlements in the West Indies, which would have justified M. Chapon, or any former governor, in inflicting torture upon a witness in the situation of Luisa Calderon, then governor Picton must be found guilty generally of the cruelties charged upon him by this indictment. I have said he *may* be justified; but how is his justification to be made out? Suppose we were here upon a question as to an act done at Coventry, which if done in London would be illegal, and I prove the fact; whereupon it is said by the accused, that there is a local act applicable to Coventry, which will justify

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him: who is to prove the law? The man certainly who justifies, and who takes himself out of the general rule. Who, then, in this case, is to prove the authority for a British governor's administering the torture to a British subject in Trinidad? General Picton; for a British governor is not by the laws of England authorized to inflict such a punishment. Has he *proved* his justification by reading extracts from some musty Spanish books, which are not shown to have existed in Trinidad at the time of the torture?—And yet you are to believe, that these books led him into the “*error*,” for my learned friend says, “there was no lawyer in the island, no graduated advocate, and what was his client to do? He was to resort to his books, and consult them as to what should be the rule of his conduct.” I wish some of the persons who gave evidence under the Mandamus had been asked, whether any of those books were resorted to, or were even in the Island till after the torture had been inflicted. M. de Castro having sworn, that he never consulted any law book, or knew of any that justified it, how can it be said, that they acted according to the written law which has been read, and which states, that the judge may, if he thinks fit, in the case of a witness not telling the truth, where there is strong suspicion, and great prevarication, inflict the torture?

But my learned friend claims it as a merit on the part of general Picton, that he did nothing more than write the order for the punishment, that he never saw the piquet, or the unfortunate sufferer raised upon it in the manner described by the drawing which is complained of, and which was also represented by the witness herself—whose “*acting*,” as it is called, has also been a matter of complaint. As to this, gentlemen, I can safely appeal to your judgment, whether there has been any unworthy acting in this cause: the drawing was not presented for the purposes of stage effect, nor until after his lordship and my learned friends had consented to its being laid before you. It was not produced to create a prejudice, but merely to enable you clearly to understand the process: I scorn to ask any thing from your passions, nor do I desire to have your verdict, unless the facts of the case force your minds to the conclusion that the defendant is Guilty. So much for the manner in which the cause has been conducted on our part.

There is, then, some written law which justifies torture; let us examine it.—The judge, in the exercise of his discretion, may order the torture to be inflicted:—What judge is to order it? And under whose inspection is such order to be carried into execution?—Some written law has been produced, which tells us, that no persons are to be present but the judge, the *escrivano* who is to take down the confession, the culprit, and the executioner; and it is to be inflicted in a place apart from all witnesses, and where no other person can

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hear what is passing. My learned friend, as I have before said, claims it as a merit on the part of general Picton, that he was not present at the torture: of this I complain as being the greatest aggravation of his offence; for I say, that the only thing which could make such a system tolerable, would be its being carried into execution under the cautious eye of a responsible judge. If the men who wrote the *lettres de cachet*, by which hundreds and hundreds of persons were shut up for scores of years, until they breathed out their miserable lives, had witnessed the sufferings of those who were condemned to such scenes of horror, there would not have been so many victims. And I will do governor Picton the justice to suppose, that if, instead of turning this woman over to Begorrat, upon whose suggestion the torture was applied, he had himself witnessed the three first moments of her agonies, his watch would not have been resorted to, but he would instantly have restored her to comfort and relief. I complain that he did not attend and see his own judgment put in execution: I say, that having in the first instance referred the business to the *alcalde*, and having consequently no right afterwards to interfere, he nevertheless issued this bloody order to be executed by another person.

But, gentlemen, to confine myself to the most important question in this case, whether there then existed any law applicable to the Spanish colonies in the West Indies, by which in the case of Luisa Calderon torture could be inflicted; we have it in evidence, that there is not from the beginning to the end of the code, one single syllable authorizing torture. My learned friend asks, whether there be any thing to forbid it. No, certainly not; you might as well ask me, whether in the code of laws sent out for the government of his majesty's colony of New South Wales, there is any enactment against the destruction of a privy counsellor; no, because there are no privy counsellors in the colony. So here, in the laws for the government of the West India colonies, there is nothing that prohibits the application of torture, because torture never had been administered. It is said, that in one of the books produced by Mr. Gloster, there is the form of a petition for the administration of torture; but show me any petition for the infliction of torture in the *West India Islands*; show me the record; show me the decree ordering it; or show that there is in the memory of the oldest man alive, any trace of such a thing having been ordered. Gentlemen, to the disgrace of the British name, the only person who ever issued such an order, was the defendant, governor Picton. I say this is in proof before you, because my learned friends, with full knowledge that their defence must be that their client had acted in conformity to the Spanish colonial law, having been aware

of this for months, and even for years, they have not offered a single scrap of paper, to show that any Spanish governor ever did any such thing. But have they called any witness to prove it? Because, I admit, that though there might be no such law, still if a practice had existed in the Island of Trinidad, that now and then, in atrocious offences, torture had been applied to persons of bad character—this, although it certainly would be no justification, would still be some extenuation of general Picton's conduct. We have not had any proof even of this sort; we have not, among the depositions taken under the *Mandamus*, the evidence of any judge, who ever issued such an order—of any gaoler, who was ever called upon to attend one of these dungeon scenes—or of any *escrivano*, who was ever employed to take down the confession, as in this case, where the poor creature is reported to have invoked the Holy Virgin, saying, that Gonzales had brought her sufferings upon her. Why has not any evidence of this sort been produced? Because there is no trace of the infliction of torture upon any one before her. What says my learned friend's own witness, M. de Gourville? When asked, whether he ever heard of the infliction of torture in the Island of Trinidad, upon any person under any circumstances, he said, "No, never;" you saw the manner in which his answer was delivered: he disclaimed all knowledge of such practice with indignation. In 1803, Mr. Gloster was employed in beating up for evidence, and in endeavouring to find any thing in any musty book, to show that torture had been allowed, and let not general Picton be deprived of the fruits of his labours. Suppose you take all this rubbish as evidence of the law, still I apprehend you will not disregard the best of all commentators upon written laws—practice and experience; neither will you disregard the testimony of that *respectable* gentleman, Mr. Nugent, who, when asked a plain question of fact, thought we meant to embarrass him; but who admitted, that he had never heard of such a law, and that if there was any such law, it never was acted upon, because there were no means of putting it in practice.

When was torture for the first time introduced? Was it introduced by some Spanish lawyer, who had been rummaging books as old as 1260, in order to discover an edict authorizing it? No: we learn the origin of it from governor Picton's own *alguazil*, who has been produced before you as a witness, and who saw Luisa Calderon when she was taken down on the first day, and into whose arms she twice fainted on the second. Is not he a man who must be able to communicate to us a little practical knowledge? He had lived ten years in the island, and he says, that no such thing was ever thought of, before the government of general Picton.

In what manner was it introduced by go-

vernor Picton? Such things are always introduced cautiously and gradually; men are not alarmed, so long as the danger does not come home to themselves; and I verily believe that, if when the piquet was first introduced as a military punishment, it had been avowed, that a miserable female, like her who has been this day produced, would have been sentenced to it, his majesty's government in the hands of general Picton would have been endangered; for people are only reconciled to such severities by degrees. The piquet made its appearance for the first time in the Island of Trinidad, as a punishment for the hardy soldier; there is no good man but must lament the necessity of such a punishment among the military; and the witness Juan Montes gave you the precise date when governor Picton ordered it to be erected in the Barrack yard. My learned friend must have been jocular, when he said he did not understand my distinction between piqueting a soldier, and the manner in which this poor girl was piqueted. I believe I was not so unintelligible to you, gentlemen of the jury; I said, that the manner in which a soldier is piqueted in England, possesses one of the characteristics of every English punishment—the being consistent with humanity, whereas the torture which this unhappy creature suffered was devoid of it. When a soldier is put upon the piquet, there is a rope afforded to him, upon which, when fatigued, he can repose, and which mitigates the punishment which otherwise would be unsupportable.

This instrument having been introduced, was, according to the evidence, for the first time applied to any witness, or to any person under accusation in the case of Luisa Calderon; and if you believe this to be true, and that the piquet was removed by the order of governor Picton, from the barracks to the prison, for the purpose of torturing this unfortunate creature, you cannot have the least hesitation in saying that he has no justification under any written law. We do indeed find an old law, which talks of the infliction of torture; but if any man will take up that most excellent book, Mr. Justice Blackstone's Commentaries, he will find,* that according to an old law of England, gypsies who remained one month in this kingdom, were liable to the punishment of death; although that eminent writer adds, that "to the honour of our national humanity, there are no modern instances of carrying this law into practice." The law has been repealed, since the Commentaries were written;† but if Mr. Gloster were to be asked in any of the courts of the inquisition, whether such was the law of England, he might say I found myself upon the authority of that admired writer upon the laws of Eng-

land, Mr. Justice Blackstone, who has distinctly stated that it is so, and that under it many persons have been convicted and executed.

Always bear in mind, gentlemen, that the question is, "whether in the year 1801, when governor Picton exercised this act of power over Luisa Calderon, he was justified by any existing law?" No new modes of punishment were to be introduced, even according to the written evidence of my learned friends; and one of their witnesses, M. Gourville, being asked whether he had ever seen any torture except tying whip-cord round the thumbs, he said No, and that even that is used only as a slight punishment for petty offences, as punishments are sometimes inflicted in our army and navy, in preference to bringing a man to a court martial, where he would be sentenced to a severe punishment. This is the only sort of torture, if it can be called so, known to M. Gourville. And so free was his mind from the idea of torture, that in order to do away all suspicion that might arise from his evidence, that torture ever was administered to extort evidence, or that there should be such an impression on the minds of Englishmen who are so jealous of personal liberty; he said that he had sometimes seen packthread tied round the thumbs of persons guilty of small offences *by way of punishment*. But there are to be no new modes of punishment introduced, although the degree of punishment is not defined by the law. This is a wise regulation, because that which would be nothing to a drayman would be death to the poor creature whom you have seen to-day; and therefore the punishment is to be inflicted according to the temperament, strength, and constitution of the person upon whom it is to be inflicted; but on no account is any new mode of torment to be adopted. De Castro tells you in the depositions that he is no lawyer; that a man may be a good alcalde who is not able to read and write; he says, he knows nothing of the existence of the Spanish law of torture; but he does know that there never was any torture inflicted, nor any means of inflicting it, until general Picton arrived in the island. He is asked, Are there not other modes of torture? and he replies, there are small tortures used, such as dropping of water, burning the feet, pullies, and small cords. I defy you, if you were to continue impanelled from my lord's summing up until sunset tomorrow, to find a single syllable that justifies the infliction of torture by the piquet, which you cannot fail to recollect a witness has described to be a small pointed piece of wood upon which the toe of this young woman rested.

But, gentlemen, supposing that torture might be inflicted in Trinidad, still general Picton was bound to adhere to the tortures known to the island; he was to use no new mode of torture. Yet one was introduced with a vengeance, namely, the rope, pulley,

* 4 Comm. 166.

† By stat. 23, Geo. 3, c. 51.

and sharp-pointed wood, which he invented and which were unknown in every Spanish settlement until he introduced them into Trinidad. If my learned friend can produce no record, nor any person to show that before general Picton held the reins of government, any punishment of this kind—punishment did I say? I have miscalled it—this torture was inflicted, then we are to see whether there is any law by which he can be justified. Whom did he consult? By whom has he been misled upon the subject? If general Picton could stand forth and say, “In the absence of the *escrivano* and the graduated advocate, the judge upon the island told me that it had always been the law, that persons guilty of these offences should be so dealt with, and that this law could not be dispensed with, and he pointed out this passage in the *Colom* and the other authorities, and I acted accordingly;” then I should say, gentlemen, that there was something like a justification of the defendant’s conduct. But is there any thing of the sort? I complain that general Picton did not consult what he says was known to contain the law of the kingdom.

The defendant should have recollected how the law is administered in England; which, if it has any particular excellence more remarkable than another, is distinguished for its extreme tenderness towards persons under accusation. What is the practice every day of the judges in our courts of law? If any syllable of confession is attempted to be produced against the accused, the judge immediately interposes in favour of the prisoner, and asks the witness, “Did you say any thing to induce him to confess? Did you use any threat? Did you give him the least reason to suppose that he would be favoured if he confessed?” And if any thing was said to induce him to believe that his condition would be better or worse, the judge, even in crimes hazarding his majesty’s sacred life, would say that the confession could not be heard. Gentlemen, a learned friend reminds me of something, to which I believe I have already drawn your attention,—the last answer of Mr. Farfan upon his cross-examination. You will remember, that Mr. Farfan was a witness produced by general Picton, and examined by Mr. Gloster, the advocate of the general through the whole of his defence, and by whom Farfan was led during the whole of his examination in chief in a manner that would not be permitted here,—Farfan’s evidence concludes with these words, “I have seen several transported during the Spanish time; I saw no other torture but imprisonment, in order to discover the truth from criminals.” You will say whether you are of opinion that there was any such law; whether you believe that general Picton has any justification, or even supposed that he was acting according to law. If such is your opinion, you will say so. But if you believe that there was no such law, and that it is a mere pretence raked up now that the day of

retribution has arrived, you will find a general verdict of GUILTY. You will do so reluctantly, but you will do so because you are Britons, and feel the satisfaction that you can protect those, who by the prowess of the British arms have become your fellow-subjects; and you will show that the poorest individual in the territories of England has the opportunity of bringing his oppressor, however high his rank, to answer for his misconduct before a court of justice.

SUMMING UP.

Lord *Ellenborough*.—Gentlemen of the Jury; It is my duty to advise you by all means to divest yourselves of every thing which can possibly inflame your minds, with reference either to the defendant, or to the particular species of punishment which is so justly odious to Britons and which is the foundation of the present charge, in order that you may calmly consider a plain question of fact; *i. e.* “at the cession of Trinidad to sir Ralph Abercrombie, what was the law of that island as confirmed by the English authorities?” It is for you to determine, whether the law by which the island was then governed, did or did not invest the governor, or chief magistrate, with the power of applying personal torture upon any occasion. In considering this subject, your attention should, in the first instance, be directed to the fifth and seventh articles of his majesty’s instructions to the defendant, which have been given in evidence, and which I shall now read:

[His lordship here read the two articles above-mentioned. See them p. 500].

The same judicial powers therefore which, previously to the cession of Trinidad to Great Britain, had been exercised by the Spanish governor, were thenceforth to be exercised in the same manner by the defendant. A nice question of fact now presents itself for consideration, *viz.* Did the criminal law, while Trinidad continued a colony of Spain, authorize the infliction of torture upon witnesses? It should be remarked, that this island formed no part of Old Spain, but was at some period (subsequent certainly to the discoveries of Columbus) connected with that kingdom as a dependency; of the terms upon which this connexion was formed, we have received no positive evidence. In the absence of any evidence applicable to this single island separately, “the Royal *Schedula*” has been produced, although it has not been read at length; it relates to the commerce and population of the West India colonies; but it does not appear that this *Schedula*, which was a communication of the royal pleasure, contained any regulations upon this subject. There is also a book called “The *Recopilacion*,” which relates to the islands generally; it does not appear that that contains any thing relative to criminal punishments, or at least any thing relative to torture. And therefore

the right of a magistrate to apply torture to a person who appears in the character of a witness must, if it exist at all, depend only upon the authorities to be derived from the several law books that have been read. Being ignorant of the terms upon which this island, two or three centuries ago, was associated with Spain, we do not know whether the whole of the laws of Spain were introduced; but this is in some degree ascertained by several witnesses, whose memories reach a considerable distance of time back. One of them, M. Gourville, knew the island in 1774, now thirty-two years ago; another witness has been examined who was born there, and who appears to have been an alcalde down to the period of his examination; and neither M. Gourville, nor M. de Vargas, nor Mr. Nugent (who speaks of knowing the island from 1781 to the present time, which comprehends a period of twenty years), nor any other person who has been examined in this cause, speaks to a single instance in which torture has been applied in the island of Trinidad. Not one witness from Trinidad who has been examined here, speaks to that fact; and in the absence of all positive proof (I mean from living witnesses) upon the subject, the question is, whether, without knowing the particular terms upon which this island became connected with Spain, you can say that the law of Spain was so fully and entirely, and in all its parts, introduced into the island of Trinidad, and domiciled there, as that torture formed a part of the law of the island? that is the question. I will state the evidence respecting that law, as it has been given by the several books recognised and stated to be law in that island; it has certainly been proved that these books are referred to and treated as authorities; but their existence in the island and the reference to them as authorities there, as far as Mr. Gloster's evidence goes, cannot extend beyond the period of his knowledge of the island, which commenced in January 1803, his appointment to the office of attorney-general bearing date October 1802. But they have certainly been adverted to as having existence, and having been referred to in the island in 1801, when the punishment was inflicted; because, prior to 1799, the instrument of torture was in the Barrack-yard. Mr. Begorrat knows no instance of its having been inflicted, and he is another to be added to the number of those who did not know it in the time of governor Chapon. He adverts to what he conceived to be the law applicable to that island in 1801. And therefore the law in the books is to be weighed against the disuse of such a practice. Not only torture itself does not appear to have been used, but this instrument of torture appears to have been first used as a civil punishment in the island of Trinidad in 1801, under the directions of governor Picton himself. Still it may be the law of Spain, and the law of Spain may have been in all its parts the law

of this island: but these which are general books apply to Old Spain; they say nothing about its dependencies, and furnish no light upon the question, whether in any and what degree these harsher laws existed in the foreign settlements of Spain.

Different passages have been read, in which the law respecting torture is laid down; there is the Royal Schedules, and the Recopilacion—royal letters and ordinances immediately from Madrid—but as nothing appears to have been contained in it one way or the other, we may fairly presume that it contains nothing in favour of torture. The Schedules contains rules for the commerce and population of Trinidad, but it does not contain any regulation authorizing torture. There is, however, another book called the Curia Philipica, consisting, I think, of two volumes, which is a treatise upon the law of Spain, and which says,

[Here his lordship read the two first extracts from the Curia Philipica. *Vide* p. 511.]

I think, gentlemen, that without going through each particular citation, you may take it to be the existing law of Old Spain as laid down in these books; for though these are text writers upon the subject, and not the real laws themselves, yet the instances are so numerous and so strong, that you may assume it to have been the general prevailing law of Spain, though it has been very seldom acted upon. The method of compelling a party in this country to plead Guilty or Not Guilty, which was abolished by statute* within the last thirty years, was the most analogous to torture of any thing in the law of England; but it would be too much to say that, because in two hundred years it had not been put in practice above once or twice, it was therefore not the law of England.

But here there is a further question, viz. whether torture ever was the law of Trinidad, there being no evidence before you that, whether it was or was not the law of Old Spain, it had been practised or acted upon in a single instance. It appearing not to have been acted upon, you are to consider whether at the time of the capitulation in 1797, it was the existing law of Trinidad. Upon this you have the evidence of Mr. Gloster, whose knowledge of the island commences only in the year 1803. Undoubtedly there are in the island law-books that refer to the law of Spain, so far as the law of Spain is obligatory there. So it might be said, there are many law-books in which are to be found the laws of Jamaica, and of the various dependencies of the crown of Great Britain, which might be cited and recognized as containing, to a certain degree, the law of England; and yet the conclusion does not necessarily follow that in every particular, the law is the same. Here is a total absence of any practical experience,

* 12 Geo. 3, c. 20.

the existence of torture during the whole life of Mr. Vargas, and within the memory of M. Gourville who went to the island in 1774 (who remembers the tying the thumbs of criminals as a punishment which is quite a different thing), of Mr. Nugent, who has known the island from 1786 being now twenty years, and of all the other witnesses. As to the evidence of M. de Vargas (upon which observations have been made) it will be for you to say to what extent you will give him credit, inasmuch as he has been a strong adversary of general Picton; he has been employed by colonel Fullarton to assist him in the examination of the witnesses for the prosecution. But, however, he states himself to have been an advocate in practice at the bar for two years; he speaks of having been in Cuba, Porto Rico, Tobago, the province of Caraccas, and the island of Trinidad, and he says he does not know nor ever heard of an instance of the infliction of torture; he goes further, and says he does not consider it as the existing law of Spain; he mentions an old law of Spain in 1260, but I think that these law-books being continued down to so late a period, and so many writers having spoken of so many instances in which torture may be inflicted, you may assume it was that law of Spain. But the question is, was it the actual existing law of the island of Trinidad? In favour of the affirmative, you have it in evidence, that Trinidad is dependent upon Old Spain, and it must therefore be understood, that there is a certain community of laws between them. But inasmuch as it is a foreign dependency of Spain, the same law does not, in all instances, obtain: in some of our islands, the law of England is qualified by local regulations, and by modifications of the constitution in consequence of directions from the Crown. Here his majes-

ty's directions are, that the laws shall be continued as they subsisted at the cession.

Taking all these facts into consideration, it is for you to say, whether, although it is in evidence, that such was the law of Old Spain at the time, you can from that circumstance necessarily infer, that it was also the law of Trinidad?—whether in the absence of all usage for 32 years, you are enabled to say that it was the existing law at the time of the capitulation? If you should be of opinion that it was the existing law at the time of the capitulation, that fact will be inserted in the special verdict: if you are of opinion that, as far as we have any knowledge of the subject, the practice of torture was not in use, and that no such law did exist, I shall have further observations to communicate to you.

At present you will consider whether torture could be applied at the discretion of the judge, and if so, whether the application of torture to witnesses formed a part of the law of Trinidad at the time of the cession of that island.

Foreman of the Jury.—We are of opinion, that there was no such law as this existing at the time of the cession.

Lord Ellenborough.—Then governor Picton cannot derive any protection from that law. If no law obtained in that island at the time which authorized the severities that were practised upon this young woman, your verdict must be that the defendant is Guilty.

A verdict of GUILTY was then pronounced by the jury, and recorded.

Mr. Dallas.—Upon the other points I shall trouble your lordship hereafter upon a motion for a new trial.

Lord Ellenborough.—The other points you know will be open to you upon that motion.

Proceedings in the Court of King's Bench, Westminster, on a Motion for a new Trial in the Case of THOMAS PICTON, Esq.: 46—48 GEO. III. A. D. 1806—1808.

The following affidavits were filed, on the part of the defendant:

IN THE KING'S BENCH.

The KING

against

THOMAS PICTON, Esq.

John LeGay, of Baldwin's-court, in the city of London, translator of languages, maketh oath and saith, that he this deponent is competent to translate the Spanish language into English, and that the paper-writing hereunto annexed, marked with the letter (A), doth contain a true

translation of certain parts or passages of and in a book called "Bobadilia Politica," now in the possession of the said defendant's solicitor; and which deponent is informed and believes was produced in evidence on the trial of this cause, and that the said translation hath been carefully and faithfully made by this deponent from the said book.

JOHN LE GAY.

Sworn at my chambers in Sergeants'-inn, Chancery-lane, this 22nd day of April, 1806,

Before me, N. GROSE.

(A.)

966, 26.—There is another kind of

complaint against a corregidor or judge in residencia, for judgments not conformable to law; and this kind is divided into two parts, the one when the judge erred in his sentence merely from ignorance or incapacity, and the other when actuated by malice or corrupt motives. With respect to the first charge of error from incapacity, I say, that a judge may be punished for it, as it is a great fault for any one to be ignorant of his profession, and of the office of judge, which he has taken upon himself: ignorance of the law can excuse very few, particularly professors of the law; but many lawyers have been of a different opinion, and say that judges are punishable only for corruption, malice, &c. *ejusdem generis*, and not for errors of judgment proceeding from incapacity, and this is observable every day in the royal audiences; for though sentences of inferior judges are frequently reversed, they are never condemned in penalties.

27.—For as the judge who solicits and accepts an office, being incapable, commits thereby a great fault, particularly if he has not examined the facts and studied the law, that he may conform to it (for inferior judges are restricted by the law), it was enacted, that if through incapacity, imprudence, negligence, or presumption, he does an injustice to the party, he may be accused (*in residencia*), and may be condemned in whatever costs and damages the parties may have sustained. But, according to Andres de Isernia, Gregorio, Lopez, and others, if the judge in the examination of the facts and law used diligence, and without deceit or fraud made use of his best endeavours, he ought not to be condemned in costs, although he may have erred in some things; for the fault arising from the imbecility of human nature, ought to be pardoned and excused.

With respect to the satisfaction that a judge in conscience ought to make in the above cases, I say, that if through malice he prejudiced or injured the party, he is bound to satisfy him fully to the extent of the injury; but if through ignorance only, there is this distinction; if the judge solicited and sought the office, he is subject to costs and damages, but if on the contrary, he was elected or compelled to accept it, he shall not be obliged to pay any thing.

IN THE KING'S BENCH.

The KING

against

THOMAS PICTON, Esq.

John Le Gay, of Baldwin's-court, in the city of London, translator of lan-

guages, maketh oath and saith, that the paper-writing hereunto annexed, marked (B), doth contain a true translation of certain parts or passages of and in a book called "La Recopilacion de las Indias," now in the possession of the London Institute Society; and that the said translation hath been carefully and faithfully made by this deponent from the said book; and this deponent further saith, that the paper-writing hereunto annexed, marked with the letter (C), doth contain a true translation of certain parts or passages of and in another book called "Politica Indiana," now also in the possession of the said society; and that the said last-mentioned translation hath been carefully and faithfully made by this deponent from the said last-mentioned book: and this deponent further saith, that he hath carefully looked through the indexes of the chapters of the said book, called the "Recopilacion de las Indias;" and that this deponent hath not found any law therein applicable to the infliction of criminal punishment.

JOHN LE GAY.

Sworn at my Chambers, in Sergeants'-inn, Chancery-lane, this 22nd day of April, 1806.

Before me N. GROSE.

(B.)

Compendium of the Laws of the Indies, by order of his Catholic Majesty Charles the Second, divided into four Books. Printed by Julian de Paredes, Madrid, 1681, with the General Index at the commencement of each book.

(Vol. 1, p. 126.)—The laws of Castile are to be abided by in all cases where provision is not made by the laws of the Indies.

"We ordain and enact, that in all the cases and suits where it is not specified and determined what the sentence should be according to the laws of this compendium, or provided for by any schedules, provisions, or edicts, issued, and not revoked by the laws of the Indies, and those we may hereafter dispatch, we do order and command, that the laws of our realm of Castile be adhered to conformable to the law of Toro, as well for the substance, determination, and decision, of all cases, affairs, and causes, as well as the form and order of proceeding."

(Vol. 1, p. 136, law 13.)—That the laws that may be made for the Indies, be as conformable as possible to those of these kingdoms.

(Vol. 1, p. 191, law 17.)—That in the courts of the Indies, the ceremonies used in the chanceries of Castile, are to be observed at all times when there is no special order to the contrary.

(Vol. 1, p. 198, law 66.)—We order, that our audiences in the cognizance they take of all suits, civil and criminal, keep the laws of these our kingdoms of Castile, in all cases that are not especially provided for by the laws of this book, and order that crimes may not go unpunished within and beyond the distance of five leagues.

(C.)

Politica Indiana, composed by Don Juan de Solerzano and Poreyra, Knight of the Order of Saint Jago, and one of his Majesty's Counsellors in the Supreme Courts of Castile and the Indies. Madrid, Royal Printing-Office of the Gazette, 1776.

(Vol. 2, p. 271.)—"The courts and chanceries of the Indies, and the judges and magistrates thereof, are invested with the same powers and authorities as those of Spain; they are therefore bound to govern in every respect by its laws and ordinances, except in these particular circumstances where any express law enacts to the contrary, as is expressly provided, and is noted by Paz and Don Francisco de Alfaro."

Ram Valens, Law 2nd, Title 1st, Book 1st, of the Compendium (or Recopilacion.)

(Vol. 2, p. 403.)—"Ordered, that in all the cases not decided by these laws, cedulae, and ordinances, the laws of Castile, are to be observed agreeable to the law of Toro, which ordinance, as it specifies in the beginning, has its origin and foundation upon the common law, which teaches that the kingdoms and provinces newly acquired, which are united and incorporated accessarily to the ancient, should be governed, ruled, and judged by the same laws on which point I have already said something in another chapter, and to which much is added, specifically exemplified in those of the Indies by Juan Orosco, Burgos, Christoval De Paz, Barbosa, Acevedo Clapperio, Valenzuelas Carrasoo, and many other authors who extend it still further, saying, that this is not only the case in respect to the laws, but also of the legal customs. For the legal customs that may have been established prescribed and observed in the mother country, must be observed and practised in the newly united countries that have been incorporated therewith, or annexed thereto, proving the same by sundry texts and authorities deserving notice in this matter."

IN THE KING'S BENCH.

The KING

against

THOMAS PICTON, Esq.

John Le Gay, of Baldwin's-court, in the city of London, translator of languages, maketh oath and saith, that the paper-writing hereunto annexed, marked with the letter (D), doth contain a true translation of certain parts or passages of and in a book called "Instituciones del Derecho Civil de Castilla;" 5th edition, Madrid, 1792; and that the same hath been carefully and faithfully made by this deponent from the said book; and this deponent further saith, that the paper-writing hereunto annexed, marked with the letter (E), doth contain a true translation of certain parts and passages of and in another book called "Instituciones del Derecho Publico General de Espana, Tomo 7, Madrid, 1802;" and that the said last-mentioned translation hath been also carefully and faithfully made by this deponent from the said last-mentioned book; and this deponent further saith, that both the said books are in the possession of the right hon. lord Holland, in his lordship's library, in Holland House.

JOHN LE GAY.

Sworn in Court, this 25th day of April, 1806.

By the COURT.

(D.)

Institutions of the Laws of Castile by the Doctors of Laws Don Ignatio Jordon de Asso and Debrío, and Don Miguel de Manuel y Rodriguez; 5th edition, Madrid, 1792.

(Chap. 6, fol. 341.)—If after the publication of evidence, the prosecutor petitions that the torment might be inflicted on the delinquent on account of the *evidence being insufficient*, there being sufficient proof to authorize it, and that it is a person to whom *it may be applied*; this last proof of the delinquency must be proceeded on, that it may not go unpunished.

(342.)—Respecting the torture we establish these three principles:—

1st. That it cannot be applied to all kinds of persons.

2nd. That it be applied solely to fully discover the truth.

3rd. That there must be very strong presumptions in capital offences.

(343.)—From the third principle, it is to be inferred:—

First, That delinquents are not to be tortured without sufficient ground for accusation (book 2, title 30, part 7), and

which is to be determined at the prudence and discretion of the judge.

Second, That if the delinquent during the torture should deny, the torture may be repeated should there appear strong appearances of guilt. *Cur. Phil. sec. 16, No. 16.*

Thirdly, That torture may be only inflicted for indications of criminality that deserve corporal punishment, and not pecuniary fines. *Book 21, title 1, part 6.*

(E.)

Institutions of the Public General Law of Spain, by the Author Don Ramon Lazaro de Dowy de Bassols, Canon and Archdeacon de Valles of the Holy Cathedral Church of Barcelona. Vol. 7, Madrid, 1802. sect. 8. Relative to Torture—Article 1st.

(Page 277 & 278.)—When it is proper to inflict torture on a delinquent.

First, The suppletory proof most deserving of particular attention and scrutiny is that by torture. After publication has been made, it is stated in the *Curia Philippica, Criminal Law 16, No. 1*, when the accuser alleges there being sufficient proof, and should there be so, he petitions for definitive judgment on the delinquent; but should there not be so, he petitions that torture might be inflicted, a copy whereof must be served on the delinquent. Then the proceedings conclude; and being concluded, and it appearing therefrom that there is not full proof for the condemnation of the delinquent to the ordinary punishment, but still proof sufficient to inflict torture on a person, provided he be one to whom it may be applied, the judge is empowered and ought to order the same to be inflicted, whether it may proceed from himself officially, or at the solicitation of the plaintiff; and whether the same may have been petitioned for, or otherwise; for previous to this period, the merits of the cause cannot be legally ascertained. This is conformable to the provisions of law 26, title 1, part 7.

IN THE KING'S BENCH.

Between our Sovereign Lord the KING

against

THOMAS PICTON, Esq.

Richard Walter Forbes, of Ely-place, in the county of Middlesex, gentleman, maketh oath and saith, that being advised by the counsel for the said defendant, that it was material to the defence of the said defendant, that the laws and works of writers on the Spanish law should be procured, he this deponent made the utmost and most diligent in-

quiries in his power to obtain such laws and works; but this deponent saith, that he was unable to procure any book of, or treatise upon the laws of Spain, except such as were in the possession of the said defendant, and produced on the trial of this indictment; and this deponent further saith, that in the course of such inquiries for such laws and works, he, on or about the eighth or ninth of February last, procured an inquiry to be made at the library of the London Institute, by one of the directors thereof, to know if any such were in that library; and received for answer, that they had no such works in their collection, or to that effect. And this deponent further saith, that there are now two works in the said library, the one intituled, "*La Recopilacion des las Indias*," and the other, "*Politica Indiana*;" and that the former of the said works was, as this deponent is informed and verily believes, purchased for the use of the said library, at the sale of the late marquess of Lansdowne's collection of books; and that the last-mentioned book was recently obtained, with many other books, from a Spanish prize, and did not form any part of the said library until about a fortnight or three weeks ago; and this deponent further saith, that he believes the first-mentioned book to be the same book that was referred to on the part of the prosecution, under the same title, although from the difference in size and the number of the volumes, it appears to this deponent not to be of the same edition; and this deponent further saith, that he, this deponent, caused a notice, a copy whereof is hereunto annexed, to be left at the dwelling-house of Mr. Wilkinson, on the seventh day of April instant; and that the said Mr. Wilkinson, on the tenth day of same April, informed this deponent that he had received the said notice but that considering the same as very unprecedented, he did not consider himself at liberty to comply therewith, without an order of this honourable court, although ready to do whatever the Court might suggest, or to that effect; and this deponent further saith, he did, on Thursday last, serve the said Mr. Wilkinson with a notice in this prosecution, that if a rule *Nisi* for setting aside the verdict obtained thereon, should be granted, the said defendant would, by his counsel, move that he might not stand committed, but be at liberty to enter into a fresh recognizance for his appearance until the said rule should be disposed of, and this honourable Court make further order to the contrary; and would, if this honourable Court shall think fit to grant such application, offer for his bail on that occasion, Nicholas Pearce, of Lothbury, in

the city of London, merchant, and Joseph Marryat, of Bridge-street, in the same city, merchant; by delivering the same to the servant of the said Mr. Wilkinson, at his house, in Red-lion-square.

R. W. FORBES.

Sworn in court, this twenty-sixth day of April, 1806.

By the COURT.

IN THE KING'S BENCH.

The KING.

against

THOMAS PICTON, Esq.

Take notice, that it is intended to move for a new trial in this prosecution; among other grounds, upon the ground that the book intituled the Recopilacion of the Laws of the Indies, mentioned and referred to by Mr. Pedro Vargas in his evidence, is a book other and different in substance from what it was represented or supposed to be by the said witness; and that I shall, together with the said defendant and Mr. Le Gay (the gentleman who has translated the papers in the Crown-office) attend at your house on Friday next, between the hours of ten and eleven o'clock in the forenoon of the same day, for the purpose of inspecting the said book and also certain other books in your possession, and referred to on the said trial, intituled the Royal Cedula for the government of Trinidad: and that I shall require you to permit me to take on behalf of the said defendant, such extracts from the said books respectively, as I shall deem proper.

Your's, &c.

R. W. FORBES,

Attorney for the said Defendant,
7th April, 1806.

To Mr. Wilkinson, Attorney for
the prosecution.

COURT OF KING'S BENCH.

Saturday April 26—46 Geo. III. A. D. 1806.

Judges:

The Right Hon. Edward Lord Ellenborough, C. J.

The Hon. Sir Nash Grose, Knt.

The Hon. Sir Soulden Lawrence, Knt.

The Hon. Sir Simon Le Blanc, Knt.

Mr. Dallas.—In the case of the KING v. General Picton, I humbly move your lordships for a rule to show cause why there should not be a new trial.

Lord Ellenborough.—Is the defendant in Court?

Mr. Dallas.—Yes, my lord.

In this case the indictment stated that

general Picton had been employed in the service of his majesty, in a civil and military capacity in the island of Trinidad; and that, during the time in which he was so employed, he caused and procured to be inhumanly tortured, a person of the name of Luisa Calderon. This is the substance of the charge against general Picton; and I do not think it necessary to go into a detail of the different counts in the indictment, because I am not at present aware that any thing will turn on the distinction between them.

The substance of the case proved on the part of the prosecution was this: that some time towards the end of the year 1801, a robbery to a very considerable amount had been committed in the dwelling-house of Pedro Ruiz; that immediately on the robbery being discovered, information of the same was laid before general Picton; that, in consequence of that information, inquiries were made, and suspicion fell on this young woman, who, as it appeared, lived as a servant and in a state of prostitution with Pedro Ruiz, in the dwelling-house wherein the robbery was committed; that general Picton, without interfering, remitted the cause to the ordinary and common tribunal, and ordered the inquiry to be conducted by a magistrate, called the alcalde, by whom for several days various persons were examined; that it turned out most clearly that Luisa Calderon was an accomplice; that the money, however, was not to be found, nor would she make a full disclosure of the persons who had been concerned with her in the robbery, though she was from time to time examined; and that in consequence, when these examinations had gone on for a great length of time, a representation was made to general Picton by the magistrate whose duty it was, in the ordinary administration of justice in the island, to take these examinations, that according to the law of Spain, it would, in that particular case, be fit to apply a slight torture. It was also proved, that in consequence of that representation coming from the ordinary magistrate of the island, general Picton directed that torture should be administered. It further appeared, that this person was put upon what is called a piquet; that she was put upon it twice; that she afterwards remained in gaol for a considerable length of time; but that general Picton was not present at the infliction of the torture; nor did it appear, that from the moment when he directed the torture to be applied, any representation respecting this business was made to him.

I think, my lords, that on the part of the prosecution, my learned friend Mr. Garrow went a step further; if I recollect right, he proved that this particular instrument of torture—the piquet—had been introduced into the island by general Picton, as a military punishment; and I admit it to have been also proved, that persons who were acquainted with the island, and who spoke

to some knowledge of it during twelve or fifteen years had never until that time known the torture applied in any case whatever. This I think was the substance of the case on the part of the prosecution.

On the part of general Picton, I took the liberty of stating different grounds of defence. In the first place, I stated that in the particular case torture was applicable, and was directed to be applied by the law of Spain, which law general Picton, holding the situation of governor of the island, and invested by his majesty with the supreme judicial authority, was bound to follow; and consequently that as by the law of Spain, which he was bound to administer, torture was admissible in this particular case, the charge was completely answered, that charge being founded on the allegation (in every count of the indictment) that the act was *unlawfully* done. On this ground of defence, I referred to a great number of extracts from different Spanish writers on the law of their country. I stated, moreover, that these books were uniformly resorted to by every magistrate engaged in the daily administration of criminal justice in the island of Trinidad, as being books of high authority, and containing the law of Spain as applicable to that island: And I stated, that I should prove this by Mr. Gloster, the present attorney-general of Trinidad, whom I intended to call as a witness.

I stated, secondly (although I do not now mean to insist upon it as a distinct proposition) that whereas it is alleged in the indictment, that general Picton did this, not only *unlawfully*, but also *maliciously*, and *without any reasonable or probable cause*, which last terms are not comprehended within the meaning of the term unlawful, it would be necessary for the prosecutor not only to prove that the act was unlawfully done, but even to go farther, and prove that, under all the circumstances of the particular situation in which general Picton was then placed, he acted *maliciously*, and *without any reasonable or probable cause*.

A third ground stated by me was, that, supposing the evidence on the part of the prosecution to be believed, and that under the circumstances in which the defendant acted, the law of Spain was not applicable to the particular case, still if it were a mere error in point of judgment, and no express malice existed in his mind (considering too that he acted in his judicial capacity) a complete defence is established.

After I had stated these grounds, and when I was proceeding to discuss them, his lordship interrupted me, and said, that these were points of great importance and considerable difficulty, and which might be proper to be argued before the court; and that from the relative situation of the two countries—England and Spain being at present in a state of warfare—there might be some difficulty in proving, according to that strictness which the rules of evidence require, that these were

books of authority upon the law of Spain. It was thereupon intimated on the part of the prosecution, that no unnecessary difficulties would be imposed upon us, with respect to that; and then the case went on for some time, on the suggestion that the facts should be reduced into a special verdict.

I stated, that by the law of Spain torture was applicable, in cases of the same description as Luisa Calderon's: my learned friend Mr. Garrow contends that, whatever might have been the law of Spain, an English governor acting under his majesty's instructions, could not be justified in administering torture. My address to the jury stopped short, under the idea that there was to be a special verdict—

Lord *Ellenborough*.—Mr. Dallas, I afterwards desired that you should make any observations which you thought material. I apprehended that it was likely to end in a special verdict, and perhaps I put you to some inconvenience; but you had afterwards an opportunity of making any observations you thought proper.

Mr. *Dallas*.—My lord, you state it most correctly; I do not complain; I only mention the fact to the court, as the other learned judges were not present.

After I had remained for some time under the notion that there was to be a special verdict, it appearing on the examination of the different witnesses that there had been no instance of the infliction of torture in Trinidad, your lordship thought that the jury ought to find a *general* verdict one way or the other. My learned friend Mr. Garrow brought forward additional evidence, and I had an opportunity of making my observations to the jury upon that evidence.

On the part of the prosecution, it was in the first place insisted, that whatever the general law of Spain might be, it was not applicable to Trinidad; for that there had not been within the memory of any witness, a single instance in which torture had been made use of. And in the next place, my learned friend Mr. Garrow produced evidence to contradict the answer which I gave to the case on the part of the prosecution: he called a witness of the name of Don Pedro de Vargas, of whose having been bred to the profession of the law we heard a great deal. This witness spoke to a book containing a compilation of the various laws which related to the Spanish colonies, and which were different from those of the mother country. And it is upon this part of the case that I mean in the first instance to trouble you with the grounds of my application, for a rule to show cause why there should not be a new trial.

In behalf of the defendant, I contended that it had been proved, and had not been denied, that by the general law of Spain, torture was applicable in a case of this descrip-

tion; that if the island of Trinidad constituted an exception to the general law, the *onus probandi* was on him who meant to set up that exception; and that mere negative evidence, that there was no instance of torture known in the island, was not sufficient to overpower the authorities which I produced. But I admit that the evidence of Mr. Vargas was very material; for he produced a book which he stated to contain the law applicable to the Spanish West India settlements, and which law differed from that of Old Spain. And he swore—what was most material—that whatever the law of the mother country was as to this, the law of the colonies was different.

The ground on which, on this part of the case, I move for a rule to show cause why there should not be a new trial, is, that the evidence of Mr. Vargas was a misrepresentation of a most material fact—and that sort of misrepresentation against which it was quite impossible for the defendant, general Picton, to guard.

My lords, I have an affidavit of Mr. Forbes, the solicitor for the defendant, in which he states, that some time before the trial came on, understanding that there was a book of that sort in existence, purporting to be a system of laws applicable to the Spanish colonies, he made every application to procure it, and took every step for that purpose, but was unable to succeed, and of course he was ignorant of its contents. We were, therefore, obliged to take its contents from Mr. Vargas. We have since been able to procure a sight of this book. A society called the London Institution purchased a copy of it, at the sale of the late marquess of Lansdowne's books, and we have obtained possession of that copy.

Lord *Ellenborough*.—Do you mean the *Recopilacion*?

Mr. *Dallas*.—Yes, my lord. I have an affidavit, that on this book being examined, so far is it from being true, that nothing in it alludes to torture; that it expressly says, that in all cases where there is no positive alteration of the law of Old Spain, that law shall be applicable to the colonies. And the affidavit goes the length of saying, that in this book there is no alteration of the law respecting torture.

Lord *Ellenborough*.—What do you state Vargas to have misrepresented?

Mr. *Dallas*.—Vargas said there is nothing in that book that alludes to torture; whereas there is an express direction that the law of Old Spain should be applicable in all cases in which it is not altered; and it is not altered with respect to torture in Trinidad.

Lord *Ellenborough*.—You apply this to contradict him; I only want to know how it goes to contradict him. He says, "I think I can say I am acquainted with the laws of the Spanish West Indies;" then he says "the

book called the *Recopilacion*, principally respects the government of the Indies. I am well acquainted with that book; and there is nothing in it that alludes to torture, to my knowledge." He then goes on with respect to the law, but that is all he says of the book.

Mr. *Dallas*.—I will state in a moment how it strikes me.

Lord *Ellenborough*.—We had not the book here at all, I think?

Mr. *Garrow*.—Yes, my lord, it was.

Lord *Ellenborough*.—Then it was only produced, because no extracts were read from it.

Mr. *Dallas*.—No, my lord.

Lord *Ellenborough*.—He says, this book, the *Recopilacion*, principally respects the dominion of the Indies, that he is well acquainted with the book, and that there is nothing in it that alludes to torture.

Mr. *Dallas*.—The substance, therefore, of his evidence was this: there being in that book no allusion to torture, it was not applicable in Trinidad: whereas, that book expressly states, that the general law of Spain applies to Trinidad, unless there is an express alteration of that law; and there is no such alteration with respect to the infliction of torture. That is the first ground on which I humbly move the court for a rule to show cause why there should not be a new trial.

My second ground is, that general Picton was at that time acting in a *judicial* capacity. And I should state to your lordships that previously to the surrender of the island to general Abercrombie, the nature of the judicial system was this:—the inferior magistrates, in all cases, were bound to submit the case to the governor of the island; from the governor there was an appeal to the audience of Caraccas on the Spanish main, and from the audience of Caraccas there was an appeal to the king and council at Madrid. By the conquest of the island, and its cession to Great Britain, the appeal from the governor of Trinidad to the audience of Caraccas became annihilated, and likewise the appeal to the king and council at Madrid; and under his majesty's instructions, all those powers which had theretofore been vested in these different tribunals were transferred to the governor of the island, with this distinction, that in civil causes of a certain amount, there was an appeal from the governor's decision, to his majesty in council; but in all criminal cases, the decision of the governor of the island was to be final.

Now, I shall state to your lordships, that in this case general Picton appears to have been acting in the regular administration of justice. A felony has been committed; information of the fact is immediately laid before him; he refers the inquiry to the competent and ordinary judge, and upon the suggestion of the judge, he orders that to be done which,

according to the law of Spain, it was represented to him it was fit to do. There are, on this part of the case, several authorities, to which I shall refer your lordships. In 1 Hawk. P. C. 350 (Mr. Leach's 1st ed.) after stating that jurors are not liable to prosecution for their verdicts in criminal matters—

Lord *Ellenborough*.—That refers to Bushell's case?

Mr. *Dallas*.—Yes, my lord. After stating that jurors are not liable to prosecution for their verdicts in criminal matters, the learned writer says, the law "hath also freed the judges of all courts of record from all prosecutions whatsoever, except in the parliament, for any thing done by them openly in such courts as judges."

In p. 130 the same doctrine is confirmed.

Mr. Justice *Lawrence*.—That refers to a Commission being irregular; in this case the commission of the defendant has no irregularity in it.

Mr. *Dallas*.—My lord, I do not say it has. The general's justification is that the act was done in his *judicial capacity*; that he had a general jurisdiction; and having a general jurisdiction—

Lord *Ellenborough*.—You say that this was done in his character of judge, and not in his character of governor?

Mr. *Dallas*.—Yes, my lord. And that there was no express malice Mr. Garrow admitted.

In the case of *Miller v. Seare* and others, 2 W. Blackstone, 1141, it was held to be "agreed, that the judges in the King's superior courts of justice are not liable to answer personally for their errors in judgment." Now I need not state to your lordships, that there is in this case no distinction between the situation of general Picton, and that of one of the judges in the King's superior courts.

In the case of *Mostyn v. Fabrigas Cowp.* 172, lord Mansfield says, that "by the law of England, if an action be brought against a judge of record, for an act done by him in his judicial capacity, he may plead, that he did as judge of record, and that will be a complete justification. So, in this case, if the injury complained of had been done by the defendant as a judge, though it arose in a foreign country, where the technical distinction of a court of record does not exist, yet, sitting as a judge in a court of justice, subject to a superior review, he would be within the reason of the rule, which the law says shall be a justification." And on that ground, therefore, if it was not the law of Spain, still if he had reason to believe it to be the law of Spain, as he had no other books than these to resort to, he has a legal defence.

Lord *Ellenborough*.—Did it appear in evidence, that these books were known in the Island of Trinidad prior to that time?

Mr. *Garrow*.—Certainly not; Mr. Gloster saw them, but he went to the Island long subsequent to that time.

Lord *Ellenborough*.—I do not think they were known to be in existence prior to that time. The attorney-general arrived there in 1803.

Mr. *Dallas*.—They were books containing the law of Spain. Your lordship will, by turning to the evidence, find that they are referred to in the depositions taken under the *Mandamus*; and I therefore beg leave, on both of these grounds, to infer that they could not be new.

Lord *Ellenborough*.—The last question, *i. e.* whether he did this act in his character of judge, is certainly very fit to be considered.

Mr. *Garrow*.—Perhaps, my lords, it might be convenient to draw your lordships' attention to this—I believe it will be found, on the testimony of the defendant's own witnesses, that the *alcaldes* and the governor had each a right to decide the causes that were respectively brought before them; that they had a concurrent jurisdiction; that every man had a right to select his own judge; and that, if he selected one of the *alcaldes*, the governor had no business to interfere, except an appeal was made to him as representing the Royal Audience of Caraccas.

Mr. *Dallas*.—That will come to the general ground of his having general jurisdiction.

Lord *Ellenborough*.—If a person selected one of the *alcaldes*, the governor had no right to interfere. I have no jurisdiction over a cause in the Court of Common Pleas, though the plaintiff might, if he pleased, have brought his action in this court; we have no jurisdiction over it, unless it is brought here by writ of error. And in that way the governor might acquire jurisdiction as representing the Royal Audience of Caraccas as court of appeal.

Mr. *Dallas*.—Your lordship will recollect, that the original complaint was made before general Picton himself; and the *alcalde*, finding it necessary that torture should be applied, suggested the fitness of it to general Picton.

Lord *Ellenborough*.—It cannot have been half before one, and half before the other. This will appear, however, from the report.

Mr. *Dallas*.—Wherever torture is to be applied, they cannot apply it without apprizing the governor of the island.

Lord *Ellenborough*.—General Picton is on bail?

Mr. *Garrow*.—Whatever the Court may choose to do, I have no instructions to give our consent that general Picton should be discharged.

Lord *Ellenborough*.—I happen to know that he has given bail to a large amount.

Mr. *Garrow*.—I say nothing either way, my lords.

Lord *Ellenborough*.—If your consent is not expressly given, our rules are invariable, and apply to all cases; and, therefore, unless there is an express consent—

Mr. *Dallas*.—Notice was given, that we had bail to offer to any amount.

Mr. *Garrow*.—I am expressly told, I am not authorized to consent to it. It is no personal act of my own.

Lord *Ellenborough*.—The court on this occasion must conform to their uniform rule on all other occasions.

Mr. *Garrow*.—And I must conform to my instructions. I have really no discretion upon the matter. If I were permitted to exercise my discretion, I hope I should exercise it in a way that would be satisfactory to general Picton; but I am not permitted to exercise any discretion upon the subject.

[After the learned counsel had consulted for a short time with the solicitor for the prosecution, he said.]

I am now released from the situation in which I was placed a minute ago; I am permitted to exercise a discretion, and I therefore consent to general Picton's being discharged.

Lord *Ellenborough*.—He is on bail at present?

Mr. *Dallas*.—Yes, my lord.

Lord *Ellenborough*.—I was under a misapprehension, when I said large bail had been put in before me. That was in another matter, and if bail has not been put in, it must be put in.

RULE GRANTED.

COURT OF KING'S BENCH.

Saturday, June 21—46 Geo. 3rd, A. D. 1806.

Lord *Ellenborough*.—This case of *The King against Picton* must necessarily occupy a considerable portion of time; and although the Court cannot but feel the utmost anxiety to dispose of it this term, still I am afraid, that we shall not be able to overcome the difficulties which stand in the way of our doing so. This is certainly a case of much moment, and is one that will require great length of argument. When we look at the paper and observe the causes yet to come, we are reduced to this situation—if we go into this case, and that of *Harden v. Smith*, the door will be shut against all the other cases that remain for judgment; I therefore wish to know whether any particular inconvenience would result

from this case standing over till the next term.

Mr. *Dallas*.—My lord, I feel myself at the present moment under some difficulty: your lordship knows perfectly well, that in this case the question submitted—and most properly submitted—to the consideration of the jury was, whether, by the law applicable to the Island of Trinidad, torture could be inflicted in such a case as that of *Luisa Calderon*. And your lordship will recollect, that upon the evidence of Mr. de Vargas (who swore that no such punishment existed under the law of Spain, and that in the book which he produced as containing the code of laws enacted for the government of the Spanish colonies, no mention of torture was to be found) the jury found, that in the Island of Trinidad, torture could not be administered; whereupon your lordship told the jury, that nothing remained for them but to pronounce a general verdict of Guilty.

Since that time, I have taken the liberty of moving your lordships for a rule to show cause why there should not be a new trial, on the ground that at the trial we laboured under the disadvantage of not having been able to procure a copy of that book which, according to Mr. de Vargas, contained the code of laws for the government of the Spanish colonies, and in which he asserted that there was no reference to torture; and on examining that book (a copy of which we have since that period been enabled to obtain) it appears, that Mr. de Vargas has grossly—I do not say whether intentionally or unintentionally—misrepresented the law; for although it is true, that the word "torture" is not to be found in any part of that book, still it is directed, that in every particular as to which the book is silent, the law of Old Spain shall be applied to the colonies.

The difficulty under which I now labour, arises from the circumstances which I will very shortly state to your lordships. It appears since the trial—

Mr. *Garrow*.—I am extremely sorry to interrupt my learned friend; but the question put by the Court to the bar, was whether there is any pressing necessity that this case should be heard in the course of the present term. I dare say my learned friend is disposed to do every thing that is right, and as long as he will confine himself to the question put by the Court, I shall not interrupt him; but I object to his going into this story, if the motion is not to be heard now. What he was going to say may be very important, but it may excite a great degree of prejudice. If the question is to be argued in the present term, it will be my duty to show cause against the rule. The press is every day teeming with paragraphs with respect to these proceedings, which may create great prejudice; and I am therefore extremely anxious, that we should

not irregularly and by piecemeal enter upon any part of the subject.

Lord *Ellenborough*.—My question was certainly intended merely to produce a dry answer.

Mr. *Dallas*.—Yes, my lord; but I am sure that when your lordship has heard me a few moments longer, it will appear that I was not irregular in bringing back to your recollection the circumstances under which this case at present stands, and in stating what has happened since the trial. It appears that an account of the trial reached the Island of Trinidad, in consequence of which a meeting was convened by the governor, at which they ascertained what the law of the island is, and his majesty's council of Trinidad have transmitted by the attorney-general, to be delivered to the secretary of state, a certificate of what is the colonial law, in which they distinctly state—

Lord *Ellenborough*.—I cannot see how what you are now stating can be given in evidence.

Mr. *Dallas*.—We are now, my lord, in a criminal case, on a charge brought against a person who has held a very high situation; and I wish to submit to your lordship, in consequence of an extraordinary circumstance which occurred yesterday, whether the Court will not give me leave to file an additional affidavit, and annex it to the former. I trust, my lords, that in a criminal case of this sort, when it is considered that these documents were regularly transmitted from Trinidad as acts of state, and that they only yesterday arrived in this country, your lordships will permit us to file an additional affidavit, and to annex these documents to it. I am sure your lordships wish to know what is the law upon the subject of torture.

Lord *Ellenborough*.—A commission has been already sent to the Island of Trinidad, for the very purpose of ascertaining the law.

Mr. *Garrow*.—When this comes before the court in a proper shape, we shall have an opportunity of being heard as to its propriety; but I cannot conceive how it can be introduced here. After we have prepared ourselves many days to show cause against the rule, upon the affidavits already filed, they come now and state something which is not in such a shape as your lordship, either at *nisi prius* or in bank can take any notice of—something which, since the conviction, they have heard about the laws of the Island. I think the court will hardly feel that they

would be administering strict justice in this case, if they were now to listen to it.

Lord *Ellenborough*.—Mr. *Dallas*, make a motion on Monday for a rule to show cause, why you should not be permitted to file an additional affidavit, and to annex the documents to which you have adverted.

Mr. *Dallas*.—My lord, I will do so. I should not have troubled the court now, had I not conceived that my duty required me to give them this information.

Lord *Ellenborough*.—As this could not be given in evidence at the trial, I do not know how it can now form an ingredient for our consideration; but I say this without prejudice. I cannot see how certificates from the governor and council of the island can be received, after there has been a solemn inquiry in that island for many months, and where it might have been proved in every way in which it was capable of proof.

Mr. *Stephen*.—My lord, this certificate contains extracts from legal records.

Lord *Ellenborough*.—We must forget the commission, otherwise this will not be available. We will certainly receive your application, and we shall hear you on Monday; but considering the time that will be necessary to answer this affidavit, it would be too much to call upon Mr. *Garrow* to answer it this term.

Mr. *Dallas*.—I do not wish to press it this term: I know the length of time it must take, and how inconvenient it would be to the other business of the court. But I thought it was more candid to state now, that we had received these documents, than to defer it to next term.

Lord *Ellenborough*.—The motion cannot be made now, because you have not I suppose an affidavit ready?

Mr. *Dallas*.—I have one ready, my lord; but I would rather make my motion on Monday.

Lord *Ellenborough*.—Make your motion on Monday, and draw up your rule for next term; because it is quite impossible to require the other side to show cause against it this term. The court have, for a variety of reasons, most anxiously wished to dispose of this case in the present term; but from causes which we cannot control, our time has been so much occupied, that we shall not be able to get through all the business, and it is therefore our duty to attend to that which is most urgent.

Court of King's Bench, Monday June 23 : 46 GEO. III. A. D. 1806.

Mr. Dallas.—In the case of the King against General Picton, I am now humbly to trouble your lordships with a motion for a rule to show cause why we should not be at liberty to file an additional affidavit. Your lordships are aware that I have already obtained a rule to show cause, why there should not be a new trial, upon affidavits which have been already filed, and the discussion of which rule, stands over till next term; and my humble application to your lordships now, is, for leave to file an additional affidavit, that refers to certain documents, which I shall state, in order that when the subject is considered in the course of next term, they may be discussed together with the other affidavits. I move this upon the affidavit of general Picton, which states, that so late as Friday last, he received, from the West Indies, certain documents, annexed to the affidavit. He says, “the affidavit hereunto annexed, marked A, was received in London only on “yesterday” (Friday last) “by the Leeward-“island Mail.” He then states that “the “name of the deponent *Francisco de Castro*, “is of the proper hand-writing of Francisco “de Castro, an *escrivano*” (scrivener) “of “the island of Trinidad, whose duty (among “other things) it is, to keep the public records “of criminal processes.”

Lord Ellenborough.—He was one of the persons examined under the mandamus.

Mr. Dallas.—Yes, my lord, he was.

The Defendant in this affidavit further says “that the name John Nihell set and subscribed to the jurat of the said affidavit” (of Francisco de Castro) “is of the proper hand-writing of John Nihell, esquire, a judge in “the said island; and that the name T. Hislop set and subscribed to the certificate at “the foot thereof, is of the proper hand-writing of his excellency Thomas Hislop, esquire, “the present governor of the said island.” The defendant’s affidavit, then refers to another paper writing which is annexed, and which is marked with the letter B.; and he swears, that “the name William Holmes, thereto set “and subscribed, is of the proper hand-writing of William Holmes, esquire, the clerk of “his majesty’s council of the island of Trinidad.”

I shall now state to your lordships, as correctly as I am able, the nature of the several documents, which are referred to in this affidavit of general Picton. Immediately upon the intelligence arriving in Trinidad, that general Picton had been convicted, on the finding of a jury, that the law of Spain was not applicable to criminal cases in the island of Trinidad so as to warrant torture or the putting parties accused to the question, as it is

called, the governor immediately thought it his duty—

Mr. Justice Lawrence.—Who states this?

Mr. Dallas.—It will appear from the documents. The governor thought it his duty to convene a meeting of those who constituted his majesty’s government there; and to the persons who attended that meeting I will call your lordships’ attention. I shall now state to your lordships the substance of the document marked B. and referred to in the affidavit of general Picton. It purports to be an official account of the proceedings adopted at a meeting of his majesty’s council held at the government-house. The persons present were, governor Hislop, John Nihell, esq. chief justice of the island, John Black, St. Hilaire Begorrat (the person upon whose representation the order for inflicting torture upon Luisa Calderon was issued), and two others of the names of James Rigby and John Smith: these are the persons who constitute his majesty’s council for the executive government of Trinidad, and this meeting was held on the first of last month. The document then states that, “The following representation was submitted to the consideration of the board by Mr. Smith; and having been maturely deliberated on, it was “moved by Mr. Black, and seconded by Mr. “Rigby, that it should be placed on the Minutes, and immediately acted upon:

“Whereas, sir Ralph Abercrombie did “order, at the conquest of the island, that all “the laws then in force should remain and “continue until his majesty’s pleasure should “be known; and the continuation thereof “had been confirmed by his majesty’s instructions to his governor; and justice has “been accordingly administered in the different tribunals of the island since the conquest, agreeable to and in conformity to “such laws and upon such authorities as had “been always considered as good and valid in “the said tribunals previous to the said conquest; and his excellency and the board “having been guided by such laws and authorities in the trials of the persons concerned in the late insurrection, and sentenced to death and otherwise punished “under their sanction the persons found “guilty and convicted;—

Lord Ellenborough.—That is a resolution, is it?

Mr. Dallas.—Yes, my lord; it is a resolution of the Council convened at the government house by the governor who has sent over an account of it to the attorney-general of the island who is now in this country, for the purpose of being delivered to his majesty.

ty's secretary of state for the colonies, as a certificate to the government here of what they consider to be the law according to which justice is to be administered in that settlement. They then go on to state that, "as on the trial of general Picton, late governor of this island, in his majesty's court of King's-bench, for an act of his government, exceptions have been made, and doubts raised as to the laws by which this colony"—

Lord *Ellenborough*.—Suppose, Mr. Dallas, a new trial was granted, and you offered that paper as evidence; how could I receive in evidence this certificate transmitted to the secretary of state, declaring their opinion as to the law?

Mr. *Dallas*.—With the greatest deference to your lordship, I conceive that, whether this would be admissible evidence upon a new trial is a question essentially different from the question whether it is not such information as is fit to be taken into consideration by the court when they are deliberating whether we are or are not entitled to a new trial. I am sure that your lordships will look to the situation in which general Picton was placed—being a military man, and being as to the civil government of the island obliged to explore his way in the dark. You will feel that this is a case deserving of very peculiar consideration; and if that which has been found by the jury upon the evidence before them to have been the law of the island, shall ultimately turn out not to have been so, the Court would, I am sure, upon a motion for a new trial, wish to have all the light that can possibly be thrown upon the case.

Not to take up more of the time of the Court than is necessary, the result was, that the council called before them all persons who were considered as having acted in the administration of justice either as judges, alcaldes in ordinary, syndics, or escribanos. It appears that in consequence these persons attended, and that certain questions were put to them respecting the criminal law of the island. But, without going through a particular detail of all the answers given to these questions, it is sufficient to inform the Court the result of which is that the criminal law of Old Spain prevails in the island of Trinidad, and that the particular code called the *Recopilacion* for the regulation of the Indies does not vary the law of Old Spain in respect of torture.

Lord *Ellenborough*.—Were these persons examined upon oath?

Mr. *Dallas*.—Yes, my lord; they were all examined upon oath.

In addition to this, which I conceive to be clearly evidence, there is a certificate expressly transmitted by John Nihell, esq. the chief justice of the island. I need not state the great variety of instances, in which

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such certificates have been held to be evidence of the laws of particular places, and which are cited by Mr. Justice Lawrence, in a case in 6. T. R..

Mr. Justice *Lawrence*.—What is the name of the case in 6. T. R. to which you refer?

Mr. *Dallas*.—The case of the King v. Mawbey, bart. and others, reported in 6. T. R. 619; Mr. Justice Lawrence says (p. 637) "And this is not the only instance of receiving certificates in evidence; certificates of bishops with respect to marriages are received;* the customs of London are certified by the recorder;† so formerly were certificates received from the captain of Calais"‡—now this is a certificate from the chief criminal judge of what is the particular law of the island—"and in Cro. Eliz. 502, 3, this court said, they would give credit to the certificate of the judges in Wales respecting the practice of their court, and that the custom of a court is a law in that court." I am not now discussing the question whether this is or is not evidence to go to the jury; I do not ask the court to decide upon that; but my humble application to your lordships is, that I may be permitted to put this upon the files of the court, that your lordships may consider it together with the evidence, and determine whether the question shall or shall not be put in a train for further inquiry and investigation.

I shall proceed to state what the certificate of Mr. Nihell is:

Mr. Nihell (who was also examined upon oath) deposes that he has been in Trinidad above twenty years, and that he understands the Spanish language perfectly; he then specifies the different gradations of office through which he passed before he came to his present situation, to which he was appointed by sir Ralph Abercrombie, and whose appointment was afterwards confirmed by his majesty. He says sir Ralph Abercrombie appointed him to the office of chief judge chief magistrate and auditor over the whole island; and that three years afterwards general Picton appointed him judge of the Consulado, or commercial court.

When asked what laws and authorities he consulted in order to regulate his legal decisions, he says, the *Schedula*, published, in the reign of Charles the second, at Madrid in 1680, directing that the collection of laws which that king had just then published under the title of *Recopilacion* &c. should serve as a code for the decision of all and every species of cases in the colonies, however contrary in some instances to the laws then in force in Old Spain. But that the second law of the second book title the first, of the same collection, ordains that the laws of Castile should be followed whenever a case

* *Vid. Co. Lit. 74: a, 9 Rep. 31, b.*

† *Ib.* ‡ *Ib.*

occurred which was not provided for by this code. He says, "I have always considered the laws of Old Spain to be in full force in Trinidad in all cases not provided for by a special law in the Recopilacion." He then mentions, among other authorities, Elizondo, whose Practice of the Laws is calculated as fully for the tribunals of the Indies as for those of Spain. The edition which he made use of was published as late as 1793, and contains nothing but what is in full force in the Indies, as well as in Spain. He says also, "I have found likewise occasionally great assistance from the Curia Philipica of Bolonas, the Cuico Juicios of Febrero, and the Instructions of Colom, which were much esteemed, and which regulated the practice and decisions of all the tribunals under the late Spanish government."

In conclusion, Mr. Nihell is asked this question, "Do you know if any book you have before cited, contains any law authorizing the infliction of torture in any cases whatever?"—His answer is "Several of them do; but I particularize Elizondo, because it is impossible to doubt, that the laws contained in this author are in force in the colonies. His Commentaries, in eight volumes, were written expressly for the tribunals in the Indies; and my friend don Juan Jurado was so anxious for my governing myself by the rules which he lays down and forming my decisions according to the laws which he cites, that he made me a present of a complete set of them on my being appointed chief justice. This author states the law for the infliction of torture very clearly, and points out the cases in which it is to be inflicted in his first volume." The last question put to Mr. Nihell is "Do you therefore consider that the above law is in force in the colony at the present day?" And to this, he replies, "I most assuredly do; but," he adds, "judges are cautious how they inflict it."

Now, here is a direct certificate as to the law of the island of Trinidad on this subject, sworn to by the chief justice, and transmitted by him to this country, for the purpose of being delivered to the secretary of state for the colonial department, and (if your lordships shall think fit) for the purpose of being put upon the files of the Court, to be taken into consideration as a part of the case, when it shall come before you for argument next term.

Your lordship will recollect, that upon the trial, the evidence for the prosecution went to the fact of there having been no instance in which torture ever was inflicted—

Lord *Ellenborough*.—You have not this book, the *Elizondo*, here, I suppose?

Mr. *Dallas*.—Yes, my lord.

Lord *Ellenborough*.—You will point out and translate the parts on which you rely.

Mr. *Dallas*.—Certainly, my lord.

I was stating, that at the trial of this cause, the evidence of the witnesses for the prosecution, went to establish the fact, that within their knowledge there was no instance in which torture had been inflicted in the island of Trinidad. And because no such instance was spoken to by any of his witnesses, my learned friend inferred that the practice was contrary to law. But one of these documents which are transmitted by the governor and council, is an affidavit from De Castro, in which he states, from the public records, an instance in the year 1791, in which torture was directed to be applied, under circumstances precisely similar to the present. He says, that upon that occasion, a negro of the name of Francisco was suspected of having assassinated—

Lord *Ellenborough*.—Do you recollect whether De Castro was not examined to this very point?

Mr. *Dallas*.—Yes, my lord, he was examined under the mandamus; and, I think it will clearly appear to the Court, on a perusal of his examination, that it was taken for granted, on both sides, that by the law of the island torture was applicable, under certain circumstances. His examination in chief was conducted by Mr. Hayes, and the very questions put to him, are put on the supposition of the existence of such a law being taken for granted. This accounts for the particular instance of its application not having been then mentioned.

However, he states, in this affidavit, that the instance I am now alluding to is to be found upon the records of the island. A charge of assassination having been lodged against a negro of the name of Francisco, the alcalde in ordinary thought it a case in which, for the discovery of the truth, torture ought to be inflicted, and thereupon an order was issued for his being put to the torture.

Lord *Ellenborough*.—I have been looking at the evidence of De Castro, and I do not find that he was asked as to this.

Mr. *Dallas*.—Your lordship will not find his examination in your note-book; his evidence is in the return to the mandamus, he was not called as a witness upon the trial.

Lord *Ellenborough*.—I am speaking of the return to the mandamus; I took a note of that evidence. He does not state any instance in which he knew that torture had been inflicted. I see that in answer to question seventieth, he says, it was not competent to the alcalde alone, without the authority of the governor.

Mr. *Garrow*.—Your lordship will find, that he swears positively, he never knew any instance.

Mr. *Dallas*.—I have not sufficient recollec-

tion of his evidence to say how it was. Suppose he did say, that he did not know any instance; what then? Upon searching the records of his office, he now finds a document, a copy of which he transmits, and which he states to be an order for the infliction of torture.

Mr. Justice *Le Blanc*.—Does he merely state, that there was an order for the infliction, or that it was actually inflicted?

Mr. *Dallas*.—He states, that there was an order for the infliction of torture, which order was transmitted to the court of appeal of Caraccas, by whom it was confirmed; but that the negro Francisco contrived to make his escape before the sentence could be carried into execution.

Mr. Justice *Le Blanc*.—Then he might fairly answer, that he never knew an instance of torture being inflicted in that island.

Mr. *Dallas*.—There is a true copy of the original order now remaining in the office of this *escrivano*. It is in these words.—“In the criminal process before the ordinary tribunal, for the murder of a negro man, named *Andrè*, in the morning of the fifteenth of August last, committed, as it is supposed, by another slave named Francisco, belonging to don Manuel de Sorzano. The tribunal having duly considered the different points of law and fact, as it should do, and attentive to the acts and the evidence that resulted from them, which, with the circumstances connected with it, amount to more than some proof; his honor, being seated officially in this tribunal, with closed doors, declared he should, as he did, condemn, the said negro, Francisco, to be put to the question, by torture, to be applied and given in the manner and form that his royal highness shall direct, to whom is reserved the right of directing the kind of torture, the length of time, and the periods in which it is to be applied; remitting, for that purpose, the original acts to the royal audience of the district, for its royal confirmation, or revocation of the sentence.”

Lord *Ellenborough*.—There is no Act of the audience of Caraccas upon it in his office?

Mr. *Dallas*.—No, my lord. It appears that Francisco escaped from gaol in 1792, before the order could be executed.

Under the peculiar circumstances of this case, and considering that the object of my application is, merely that this information may be laid before the Court to be taken into their consideration, I should humbly hope that your lordships will now give me leave to file this additional affidavit.

Lord *Ellenborough*.—You should file it now, in order to give the other side an opportunity of answering it. When I say now, I do not mean to-day, but in a convenient time—a considerable time before the next term,

because they may want to send abroad. I think you should file it within a day or two.

Mr. Justice *Grose*.—Within a week.

Mr. *Dallas*.—When I mentioned this on Saturday, I understood it would stand over until next term.

Lord *Ellenborough*.—So it will as to showing cause; but this affidavit should be filed as soon as it can be with convenience, that the other side may be able (if they wish) to prepare an answer to it before the expiration of the long vacation.

Mr. *Dallas*.—I thought it more fair to mention this now than to let it stand over till the next term, when the case will come on again. We shall file the affidavit in a week.

Lord *Ellenborough*.—You must take the rule on these terms:—that you do file the affidavit and the documents annexed to it now; in order that they on the other side may have an opportunity of seeing and knowing what they have to show cause against. You will file the affidavit and documents now, and they will show cause hereafter.

Mr. *Dallas*.—Mr. Gloster, the attorney-general of the island, and who was examined upon the trial, is under the necessity of returning to Trinidad. I do not know whether my learned friends on the other side will have any objection to your lordship's reading his evidence upon the former trial; or whether we must examine him on interrogatories.

Mr. *Garrow*.—I could not possibly consent that Mr. Gloster's evidence should be read on the new trial, if your lordships should think proper to grant a new trial. This case may make it extremely important for me to ask Mr. Gloster some questions in cross-examination.

Lord *Ellenborough*.—We cannot by anticipation settle now what may be done in the event of a new trial being granted; the Court are first to determine whether they will grant a new trial.

Mr. *Garrow*.—There is one thing extremely important which ought to be distinctly understood. Your lordships see that they rely upon certain books which are in their possession. I do not understand from Mr. Dallas, that the extracts from these books on which they rely are to be filed; but I think that they ought to be filed with the other documents, that we may have an opportunity of examining them.

Lord *Ellenborough*.—I think you should file the affidavit, and documents transmitted; and leave the books in the hands of the master of the Crown-office, because they may perhaps be books of which there are no duplicates in England.

Mr. *Dallas*.—The extracts are already in evidence; the only question is, whether the law of Old Spain applies to the colonies; the different authors point out the cases in which you may inflict torture, and our only dispute is, whether this law applies to the island of Trinidad.

Lord *Ellenborough*.—You are reading other extracts in order to show that that law does apply to the colonies?

Mr. *Dallas*.—No, my lord. The substance of the documents annexed to the affidavit is, that the books of these authors which purport to contain the law of Old Spain, are books of legal authority and are acted upon as such in the island of Trinidad, the extracts are upon your lordship's notes.

Lord *Ellenborough*.—Then you do not mean to read any further passages, but to show that those which you have read apply to the colonies?

Mr. *Dallas*.—M. de Vargas was examined to the contents of that book called the *Recopilacion*, in which he stated, that there was nothing about torture. Now, in my former affidavits* (on obtaining a rule to show cause why there should not be a new trial) there are extracts from that book which refer to the law of Old Spain on this subject, and I do not mean to produce any fresh extracts.

Lord *Ellenborough*.—You mean to contradict Vargas from the *Recopilacion*. You mean to draw from that book materials to contradict him, and this shows the necessity of having that book deposited.

Mr. *Dallas*.—When I made my motion for a new trial, one of the grounds upon which I obtained my rule was, that *they* were in possession of that book, and that *we* could not get a sight of it or examine its contents until after the trial took place.

Mr. *Garrow*.—As far as the *Recopilacion* goes, I do not ask any thing of my learned friend; but, I understand some passages are proposed to be read out of this new matter received from Trinidad, to enforce their case: If they are, it is fit they should be drawn under our notice: I do not want any additional extracts, that they may take from any book, unless they contend that they are to be considered as the law of the Indies; and then they ought to be deposited, that we may have an opportunity of looking at them.

Lord *Ellenborough*.—You must point out all those you mean to rely upon.

Mr. *Garrow*.—They state that the law of Old Spain is established as the law of Trinidad in all cases not provided for by the code called the *Recopilacion*. But I say that this case is provided for by the *Recopilacion*.

Mr. Justice *Lawrence*.—You are agreed in this, that if the case be provided for by the *Recopilacion*, the verdict is right: but that if not, the law of Old Spain is the law of Trinidad?

Mr. *Garrow*.—Precisely so.

Mr. Justice *Lawrence*.—There was a book called the *Elizondo*, and its Commentary, of eight volumes, mentioned by you, Mr. *Dallas*; have you any extracts from that book?

Mr. *Dallas*.—Yes, my lord; we read extracts from that on the former trial.

Mr. *Garrow*.—We ought to have access to that book.

Lord *Ellenborough*.—The *Elizondo* and the *Recopilacion* ought to be deposited in the hands of the master, that both sides may have an opportunity of access to them.

Mr. *Dallas*.—Then I ask of your lordships that this order be complied with on both sides within a month before the case comes on to be argued.

Mr. *Garrow*.—Why should they not now be left in the hands of the clerk in court? Why should it not be done immediately?

Mr. *Dallas*.—Because I thought it was not necessary; I thought it would equally answer my friend's purpose if they were deposited a month before the end of the long vacation. But as that is not so, I propose within a week to deposit them.

Lord *Ellenborough*.—Very well. Let them be brought to the master of the Crown-office.

The Defendant's Affidavit was filed, together with the documents annexed to it, of the then Trinity Term: they were as follows:—

IN THE KING'S-BENCH.

The KING

against

THOMAS PICTON, Esq.

Thomas Picton, of Edward-street, Manchester-square, in the county of Middlesex, esquire, the defendant above named, maketh oath and saith, that the affidavit hereunto annexed, marked with the letter (A), was received in London only on yesterday by the Leeward Island mail; and this deponent further saith, that the name of the deponent, "Francisco de Castro," thereto set and subscribed, is of the proper hand-writing of "Francisco de Castro," an *escrivano* of the island of Trinidad, whose duty (among other things) is to keep the public records of criminal processes; and this deponent further saith, that the name, "John Nihel," thereto set and

* Vide p. 539.

subscribed to the jurat of the said affidavit, is of the proper hand-writing of John Nihel, esquire, a judge in the said island; and that the name, "T. Hislop," set and subscribed to the certificate at the foot thereof, is of the proper hand-writing of his excellency Thomas Hislop, esquire, the present governor of the said island; and this deponent further saith, that the paper-writing hereunto annexed, marked with the letter (B), was received at the same time, and that the name, "William Holmes," thereto set and subscribed is of the proper hand-writing of William Holmes, esquire, the clerk of his majesty's council of the island of Trinidad.

THOMAS PICTON.

Sworn in Court, this twenty-first
day of June, 1806.

By the COURT.

(A.)

TRINIDAD.

Francisco de Castro, of the island of Trinidad, public scrivener of the said island since the year one thousand seven hundred and eighty-six, maketh oath and saith, that on the fifteenth day of August, one thousand seven hundred and ninety, a negro named Francisco, belonging to Don Manuel Sorzano, who was then contador or collector of the said island, was accused of having assassinated, in the town of Port of Spain in the said island, a negro man named André, belonging to a Mr. Joseph, a planter in the quarter of Tacarigua; and that the said negro, Francisco, was officially prosecuted for the said crime by order of the then alcalde in ordinary of the first election, Don Pedro de Ybarrente, having for his assessor el licenciado Don Blas de Savignon; and that the said prosecution was continued before the said tribunal until the 8th day of April 1791, when it was passed over to lieutenant-colonel Don Mathias de Letamendi, then appointed in succession as alcalde of the first election, who, together with the said assessor, made a decree thereupon, a correct translation of which is as follows: "In the criminal process before the ordinary tribunal for the murder of a negro man, named André, in the morning of the fifteenth of August last, committed, as it is supposed, by another slave, named Francisco, belonging to Don Manuel de Sorzano: The tribunal having duly considered the different points of law and fact as it should do, and attentive to the acts and the evidence that resulted from them, which, with the circumstances connected with it, amount to more than some proof; his honor being seated officially in this

tribunal, with closed doors, declared he should, as he did, condemn the said negro, Francisco, to be put to the question by torture, to be applied and given in the manner and form that his royal highness shall direct, to whom is reserved the right of directing the kind of torture, the length of time, and the periods in which it is to be applied, remitting, for that purpose, the original acts to the royal audience of the district for its royal confirmation or revocation of the sentence. Mathias Letamendi; Licentiate, Blas Savignon." To which he, this deponent, agreeable to his duty as escrivano in the cause, added, in the Spanish language, a true translation of which is as follows:—"The aforesaid was given and pronounced by his honor Don Mathias Letamendi, lieutenant-colonel of his majesty's forces and alcalde in ordinary of the first election of this island of Trinidad, who so ordered and pronounced it being in private audience with the opinion of his assessor in the Port of Spain, the sixth of June 1791, before me, Francisco de Castro, public servant of government." And this deponent further maketh oath and saith, that a true copy of the original proceedings, which were remitted to the royal audience of the said district, remains deposited in his, this deponent's, office, as escrivano aforesaid; and that there is also in his said office a small volume of acts composed of four leaves, which proves that the said negro, Francisco, escaped from gaol the fourth of May 1792, carrying with him the sentinel, named John Inglis, notwithstanding the legs of him, the said negro, Francisco, were confined in irons; and this deponent further saith, that the original acts of the aforesaid proceedings were never returned to him, this deponent; but he was informed by the said assessor, Don Blas de Savignon, at the time the said negro, Francisco, escaped from gaol, that the said proceedings had been returned by the audience of Caraccas, with a confirmation of the sentence of torture; and on the same coming to the knowledge of the said negro, Francisco, he contrived to make his escape before the said sentence of torture could be put in execution; and this deponent further maketh oath and saith, that in the kingdom of Cordova, in Old Spain, in the village of Castro el Rio, where he resided some time before he came to America, it was publicly reported and believed, that two men of the town of Lucena, who had murdered the vicar of the said town, were put to the torture in a private apartment of the gaol of the said village of Castro el Rio; and he, this deponent, being at the time near to the said gaol, in company

with other persons of the place, he heard the cries and lamentations of the said men; and this deponent further maketh oath and saith, that Juan Montes was the person who instigated the business of Luisa Calderon against general Picton, because, as he said, Juan Montes declared general Picton had caused him to be put in gaol for a debt which he owed to a coloured woman, named Rupert; and this deponent further saith, that, being one day at colonel Fullarton's at Port of Spain aforesaid in company with the said Juan Montes, he, this deponent was ordered by colonel Fullarton to go and bring to him all the criminal processes that were then in his, this deponent's, office, during the government of general Picton, which processes he had just then received orders from the other commissioners of his majesty to make testimonial copies thereof; and this deponent accordingly went and brought and delivered all the said processes to colonel Fullarton in the presence of the said Juan Montes and of Pedro Vargas: and this deponent further saith, that afterwards the said Juan Montes and Pedro Vargas were continually soliciting him to go to England to give evidence against general Picton; and the said Pedro Vargas even remained some time in the island after colonel Fullarton's departure therefrom, and had a vessel under his orders for the express purpose of carrying this deponent to the island of Tortola.

Sworn at the Port of Spain, aforesaid the 5th day of May 1806, the same having been first interpreted in the Spanish language to the deponent, before me,

FRANCISCO DE CASTRO.

The words "informed," "village of Castro el Rio," and "woman," being first interlined.

JOHN NIBELL,

Chief Judge and Auditor.

H. CORRAL, Government
Interpreter, Trinidad.

By his excellency Thomas Hislop, (L.S.) esq. governor and commander in chief in and over the Island of Trinidad and its dependencies,

I, Thomas Hislop, governor and commander in chief of the island of Trinidad, do hereby certify, that the above-name John Nihell is chief judge and auditor of the island of Trinidad; and that the name, John Nihell, above written, is of his, the said John Nihell's, proper hand-writing. In testimony whereof, witness my hand and seal of government

this fifth day of May aforesaid, at Port of Spain in the said island.

T. HISLOP.

(B.)

TRINIDAD.

At a Meeting of his Majesty's Council, held at Government House, on Thursday, the 1st day of May, 1806:

Present

His Excellency Brigadier-Gen. Hislop Lieutenant Governor, the Honorable John Nihell, John Black, S. Hre. Begor-rat, James Rigby, John Smith.

The proceedings of the last meeting being read and approved, the following representation was submitted to the consideration of the board by Mr. Smith; and having been maturely deliberated on, it was moved by Mr. Black, and seconded by Mr. Rigby.

That it should be placed on the minutes, and immediately acted upon.

Whereas Sir Ralph Abercromby did order, at the conquest of the island; that all the laws then in force should remain and continue until his majesty's pleasure should be known, and the continuation thereof had been confirmed by his majesty's instructions to his governor; and justice has been accordingly administered in the different tribunals of the island since the conquest, agreeable to and in conformity to such laws, and upon such authorities as had been always considered as good and valid in the said tribunals previous to the said conquest; and his excellency and the board having been guided by such laws and authorities in the trials of the persons concerned in the late insurrection, and sentenced to death and otherwise punished under their sanction the persons found guilty and convicted; and as on the trial of general Picton, late governor of this island, in his majesty's court of King's-bench, for an act of his government, exceptions have been made and doubts raised as to the laws by which this colony was governed when Spanish, and some particular laws and authorities then quoted have been disputed as if they did not extend to this colony: It has, therefore, become the duty of this board to take all the necessary and proper measures, (as well for its own justification as for the justification of the other tribunals, and also to tranquillize the minds of the inhabitants, which have been considerably alarmed by this circumstance, as well as to prevent any bad circumstances which may result from an idea, that government has not been legal in its proceedings) to ascertain and establish the existence of the laws of Spain; and

that they were applicable in all cases previous to the conquest; that there never was any laws framed for its particular government, and what books and authorities were considered good and valid; and also that his majesty's court of King's-bench in this cause, if a new trial should take place, or on any future occasion when it should be wanting, may possess the best authenticated information as to the extension of the laws of Spain to this colony, and of the different books and authorities which were considered good and valid in the tribunals previous to and since the conquest, and as the best and most effectual means, and being the proper and regular channel through which such information should be collected and examined on motion made and seconded, It was resolved,

That all such persons as have been concerned in the administration of justice, either as judges, alcaldes in ordinary, syndics, or escrivanos, be requested to attend this board, that they may be examined on oath how far the laws of Spain did generally extend to this colony; and if they were not applicable in it in all cases previous to the conquest, if there were any laws framed for its particular government, and what books and authorities were considered good and valid in the tribunals and offices; and that such examination, with the proceedings of this board, be sent to the honorable Archibald Gloster, agent for the colony, to be by him laid before his majesty's secretary of state for the colonies.

The alcaldes in ordinary, the syndic of the Cabildo, the four escrivanos, and the defender of the absentees, an admitted attorney having been summoned, attended accordingly, and were severally sworn.

WM. HOLMES,
Deputy Clerk of Council.

Antonio Ardilla attended, and was sworn.

Question 1.—What is your name, age, nation, and profession?—*Answer.* Antonio Ardilla, aged forty-four years, born in Andalusia, in the kingdom of Seville, by profession a public Escrivano, and also Escrivano of the Cabildo.

Question 2.—How long have you been a public Escrivano, and how long Escrivano of the Cabildo of this island?—*Answer.* I am since the year 90 a public Escrivano, and of the Cabildo since 1802.

Question 3.—By what laws and ordinances has the administration of civil and criminal justice been directed from the time you have been an Escrivano until the present day; mention the titles of those laws, ordinances, and authorities to the best of your knowledge?—*Answer.*

By the Spanish laws, which are the Recopilacion of Castilla, and Partidas—the Recopilacion of the laws of Indias—the Authors—the Curia Philippica, Elizondo, Febrero, Colom, and others, which are not in my immediate recollection.

Question 4.—Can you affirm, in your official capacity, and as recorder and depositary of all such processes as have been pleaded before the tribunals and attested by you during the period aforesaid, that the decrees and sentences in the administration of justice in these processes, have been issued under the authority of those laws.—*Answer.* Yes, certainly, I do affirm they have been issued under those authorities.

Question 5.—Were the laws of Spain before the conquest of the island by his Britannic majesty's arms applied, and acted upon in every case that occurred in the administration of civil and criminal justice.—*Answer.*—Yes, Sir.

Question 6.—Do you know if there ever existed previous to the conquest as aforesaid any particular code of laws for the administration of civil and criminal justice in this island.—*Answer.* No, sir.

ANTONIO ARDILLA

WM. HOLMES,

Deputy Clerk of Council.

CHARLES A. TELLINER, Government Interpreter.

Mr. De Castro attended, and was duly sworn.

Question 1.—What is your name, age, nation, and profession?—*Answer.* Francisco De Castro, aged 43 years, born in the city of Cordova in Old Spain, by profession a public and government escrivano.

Question 2.—How long have you been a public escrivano?—*Answer.* I am a public escrivano since the year 1786.

Question 3.—By what laws and ordinances has the administration of civil and criminal justice been directed from the time you have been an escrivano until the present day; mention the titles of those laws, ordinances, and authorities, to the best of your knowledge?—*Answer.* In virtue of his Catholic majesty's orders before the capture of this island, and since, by his Britannic majesty's, the administration of both civil and criminal justice has been directed and regulated by the Spanish laws, which are the Recopilacion das Indias.

The Recopilacion of Castilla.

The laws of the Seven Partidas of the sapient king Don Alonzo, and with the Glossary of Gregory Lopez on them.

The Curia Philippica, the Political Treatise of Bobadilla, doctor Martinotz Herredon Criminal Law, doctor Colom Febrero, bachelor of law, doctor Elizondo,

Fiscal of the audience of Grenada in Old Spain, and many others which I do not at present recollect; but those I have mentioned are the only law authorities which I have seen used in the island.

Question 4.—Can you affirm, in your official capacity, and as recorder and depository of all such processes as have been pleaded before the tribunals, and attested by you during the period aforesaid, that the decrees and sentences in the administration of justice in those processes have been issued under the authority of those laws?—*Answer.* Yes, certainly, I do affirm it, and also declare upon my oath, that all the decrees and sentences issued by the different judges on the processes, pleaded before the tribunals, and attested by me after the conquest of this island, have been given as nearly as possible according to the laws and authors already mentioned, although there were no lawyers or men learned in the laws to consult with, which is mentioned in some of the sentences aforesaid.

Question 5.—Were the laws of Spain, before the conquest of the island by his Britannic majesty's arms, applied and acted upon in every case that occurred in the administration of civil and criminal justice?—*Answer.* Yes, sir.

Question 6.—Do you know if there ever existed, previous to the conquest as aforesaid, any particular code of laws for the administration of civil and criminal justice in this island?—*Answer.* No, sir.

Question 7.—You were a public scrivener of government before its conquest by the arms of his Britannic majesty, and as such employed principally in all the criminal causes that occurred before that period; can you affirm, upon the oath you have taken, that torture in none of those criminal causes which were then, as *escrivano*, attested by you, was ever applied; and if it was, was permission first obtained from the superior tribunal of Caraccas. If any thing of this kind has come to your knowledge, explain the manner of torture applied, and the circumstance of the case?—*Answer.* I remember that previous to the capture of the island on the 6th June 1791, that the original proceedings in the criminal cause of which Don Mathias de Letamendi was judge against a negro slave belonging to Don Manuel Sorsano, were with the advice of the assessor, Don Blas Savinon, transmitted to the royal audience of Caraccas for their approbation; a legal copy thereof, containing 160 folios, being first taken, and which remains in the archives under my charge, in order that the torture in consequence of the prisoner's denial of the fact, although the same was proved, might be applied to

him; and that the said original proceedings were never returned to me, notwithstanding I was informed by the assessor, Don Blas Savinon, that they had been sent back with their confirmation and approbation thereof, and which being learnt by the prisoner, occasioned his being permitted to escape.

FRANCO. DE CASTRO.

WM. HOLMES,

Dpy. Clk. of Council.

CHAS. A. TELLINEAU.

Government Interpreter.

Mr. *Garmendid* attended, and was duly sworn.

Question 1.—What is your name, age, nation, and profession?—*Answer.* Manuel Garmendid, aged 27 years, a native of Cumana; by profession a public *escrivano*.

Question 2.—How long have you been a public *escrivano*?—*Answer.* I am an *escrivano* since the 22d November 1802.

Question 3.—By what laws and ordinances has the administration of civil and criminal justice been regulated from the time you have been an *escrivano* until the present day. Mention the titles of those laws, ordinances, and authorities to the best of your knowledge?—*Answer.* The Spanish laws which are—The *Recopilacion des Indias*—The *Recopilacion of Castilla*—The laws of the Seven *Partidas* of the sapient king, Alonso—*Curia Philippica*—doctor Elizondo, Colom, Martinez, Febrero, Bobadilla, Herrerd on Criminal Law, and several others, which are not to be had in the island.

Question 4.—Can you affirm, in your official capacity, and as recorder and depository of all such processes as have been pleaded before the tribunals and attested by you during the period aforesaid, that the decrees and sentences in the administration of justice in those processes have been issued under the authority of those laws?—*Answer.* Yes, certainly, I do affirm it.

Question 5.—Have you ever studied or practised in the law in any other country?—*Answer.* Yes, I studied as clerk to different lawyers at Cumana, and also three years with a public *escrivano*, named Joseph Croare.

Question 6.—Were the laws and authorities which you have already mentioned, in force and practised at Cumana?—*Answer.* Yes, certainly.

MANUEL GARMENDID.

WM. HOLMES, Deputy clerk of Council.

CHARLES A. TELLINEAU,

Govnmt. Interpr.

Mr. *Orosco* attended, and was duly sworn.

Question 1.—What is your name, age,

nation, and profession?—*Answer.* Joseph de Orosco, aged 36 years, a native of Cadiz; by profession an *escrivano publico*.

Question 2.—How long have you been a public *escrivano*?—*Answer.* I am two years a public *escrivano*.

Question 3.—By what laws and ordinances has the administration of civil and criminal justice been directed from the time you have been an *escrivano*, until the present day?—mention the titles of those laws, ordinances and authorities, to the best of your knowledge?—*Answer.* The laws of Spain, which are as follows—The *Recopilacion* of the *Indias*—*Recopilacion* of *Castilla*—The laws of the *Seven Partidas*—*Curia Philippica*—*Doctor Elizondo*, *Febrero*, *Colom*, and several other authors.

Question 4.—Can you affirm, in your official capacity, and as recorder and depository of all such processes as have been pleaded before the tribunals and attested by you during the period aforesaid, that the decrees and sentences in the administration of justice in those processes have been issued under the authority of those laws?—*Answer.* Yes, certainly; I do affirm it.

Question 5.—Have you ever studied the law in any other country?—*Answer.* No; I have been two years clerk to the *escrivano Garmendia*.

JOSE OROSCO.

WM. HOLMES, Deputy
Clerk of Council.

CHARLES A. TELLINEAU,
Government Interpreter.

Mr. Lubault attended, and was duly sworn.

Question 1.—What is your name, age, nation, and profession?—*Answer.* Francis Lubault, aged 50 years, a native of St. Sebastian in the province of Biscay; by profession an attorney to the tribunal, and defender of absentees.

Question 2.—How long have you been an attorney and defender of absentees?—*Answer.* I am an attorney since the year 1785, and defender of absentees ever since the capture of the island by the English.

Question 3.—By what laws and ordinances has the administration of civil and criminal justice been regulated from the time you have been an attorney and defender of absentees until the present day?—Mention the titles of those laws, ordinances and authorities, to the best of your knowledge?—*Answer.* The laws of Spain—The *Recopilacion des Indias*—The *Recopilacion* of *Castilla*—The laws of the *Seven Partidas*—The author of the *Curia Philippica*, *Elizondo*, *Febrero*, *Colom*, and several other authors of the law.

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Question 4.—In the different processes in which you have been engaged as an attorney, can you affirm that you have been regulated by the laws and authorities you have already mentioned?—*Answer.* Yes, certainly.

Question 5.—Were the laws of Spain before the conquest of the island by his Britannic majesty's arms applied and acted upon in every case that occurred in the administration of civil and criminal justice?—*Answer.* Yes.

Question 6.—Do you know if there ever existed, previous to the conquest as aforesaid, any particular code of laws for the administration of civil and criminal justice in this island?—*Answer.* No.

FRANCISCO LUBAULT.

WILLIAM HOLMES,

Deputy Clerk of Council.

CHARLES A. TELLINEAU,

Government Interpreter.

Mr. St. Pee attended, and was duly sworn.

Question 1.—What is your name, age, nation, and profession?—*Answer.* Nicholas St. Pee, aged 57 years, born in Bayonne in the kingdom of France, syndic proctor general to the *Cabildo*.

Question 2.—How long have you resided in this island?—*Answer.* About 23 years.

Question 3.—How often have you been elected a member of the *Cabildo*, and have you held any other judicial situation in this island than that one you have just mentioned?—*Answer.* I have been elected a regidor twice, and *alcalde* of the 2d election two years.

Question 4.—By what laws and ordinances has the administration of civil and criminal justice, as also the acts of the *cabildo*, been regulated, from the time you arrived in this island to the present time?—Mention the titles of those laws, ordinances and authorities, to the best of your knowledge and recollection?—*Answer.* By the laws of Spain as follows.—*Recopilacion des Indias*—*Recopilacion de Castilla*—The laws of the *Seven Partidas*—The *Curia Philippica*—*Elizondo*, *Colom*, *Febrero*, *Bobadilla*, *Herrera*, &c.

Question 5.—Have your decrees and legal decisions as a judge, been regulated and directed by the law authorities you have already mentioned?—*Answer.* Yes, they have.

Question 6.—Mr. St. Pee, do you mean to say, that the laws of Spain prevailed and were acted upon in the island of Trinidad prior to its capture in 1797?—*Answer.* Certainly, I do.

Question 7.—Was the law of Spain in all cases applicable to Trinidad?—*Answer.* It always was—as no local civil or

criminal code of laws ever existed in this island for its regulation.

NICHOLAS SAINT PEE.

WILLIAM HOLMES,

Deputy Clerk of Council.

CHARLES A. TELLINEAU,
Government Interpreter.

Mr. *Dancla* attended, and was duly sworn.

Question 1.—What is your name, age, nation and profession?—*Answer.* Joseph Marie *Dancla*, aged 43 years, born in Banien in Vignon province of Guienne, and now alcalde of the 2d election.

Question 2.—How long have you resided in this island?—*Answer.* Eighteen years.

Question 3.—By what laws and ordinances, has the administration of civil and criminal justice, as also the acts of the Cabildo, been regulated from the time you arrived in this island to the present time?—mention the titles of those laws ordinances and authorities to the best of your knowledge and recollection?—*Answer.* By the laws of Spain—The *Recopilacion of Indias*—*Recopilacion de Castilla*—The laws of the Seven Partidas—The *Curia Philippica*—*Elizondo*, *Colom*, *Febrero*, *Bobadilla*, *Herrera*.

Question 4.—Have your decrees and legal decisions as a judge, been regulated and directed by the law authorities you have already mentioned?—*Answer.* Yes, they have.

Question 5.—Mr. *Dancla*, do you mean to say, that the laws of Spain prevailed and were acted upon in the island of Trinidad, prior to its capture in 1797?—*Answer.* Certainly I do.

Question 6.—Has any local civil or criminal law ever existed in Trinidad?—*Answer.* I have never known any other laws to exist in this island, except the laws of Spain, as already mentioned by me.

JOSEPH MARIE DANCLA.

WILLIAM HOLMES,

Deputy Clerk of Council.

CHARLES A. TELLINEAU,
Government Interpreter.

Mr. *Portel* attended, and was duly sworn.

Question 1.—What is your name, age, nation, and profession?—*Answer.* Bartolome *Portel*, a native of Trinidad, aged 40 years, and at present alcalde of the 1st. election.

Question 2.—How often have you been elected as a member of Cabildo?—*Answer.* In the year 1789 I was elected provincial alcalde mayor. I afterwards succeeded to the situation of regidor de cano, or senior regidor, in which I was confirmed by his Catholic

majesty, and have remained ever since so; in the year 1793 I was appointed *alquazil mayor*, and confirmed by the king of Spain.

Question 3.—By what laws and ordinances has the administration of civil and criminal justice, as also the acts of the cabildo, been directed, from the time you arrived in this island to the present time?—mention the titles of those laws ordinances and authorities, to the best of your knowledge and recollection?—*Answer.* By the laws of Spain;—*Recopilacion des Indias*—*Recopilacion de Castilla*—The laws of the Seven Partidas—The *Curia Philippica*—*Elizondo*—*Colom*, *Febrero*, *Bobadilla*, *Herrera*.

Question 4.—Have your decrees and legal decisions, as a judge, been regulated and directed by the law authorities you have already mentioned?—*Answer.* They have.

Question 5.—Do you mean to say, that the laws of Spain prevailed, and were acted upon, in the island of Trinidad, prior to its capture in 1797?—*Answer.* Yes, sir.

Question 6.—Has any local civil or criminal law ever existed in Trinidad?—*Answer.*—I have never known any other laws to exist in this island, except the laws of Spain, as already stated.

BME. PORTEL.

WILLIAM HOLMES,

Deputy Clerk of Council.

CHARLES A. TELLINEAU,
Government Interpreter.

George Knox, esq. King's Counsel, being duly sworn.

Question 1.—How long have you been in the practice of the law in this island?—*Answer.* I arrived in June 1802, and began to practise as a lawyer about 6 months afterwards.

Question 2.—Do you understand the Spanish language?—*Answer.* I understand it sufficiently to read and comprehend the different law books in that language without much difficulty.

Question 3.—Have you been concerned for your clients in causes pleaded before the tribunals of the *alcaldes*?—*Answer.* In various cases, both civil and criminal.

Question 4.—In those causes, by what laws and what authorities have you been guided in your practice?—*Answer.* The Spanish laws are, like all other foreign laws, founded on the Roman law. The books of authority on criminal law, in use in this island are, the Seven Partidas, digested by *Alonso the Wise*, and edited by *Gregory Lopez*; the Collection of the laws of *Castilla*; and *Bobadilla's Commentary*.

Those on civil and commercial law are, the Curia Philippica, Donringuezes illustration of it; the ordinance of Bilboa, and Febrero Cinco Juicios. Mr. Nihell is also in possession of "Martinez Judges Library." Those on practice are, Colom's Instructions, Elizondo's Practice, Herrera's Practice, Munos Practice, and the Cartilla Real.

The Recopilacion of the Indies is merely a collection of royal edicts, and the Cedula of 1783 is only in use in the Commissary of Population's office; and contains orders relative to the treasury, the granting of lands, payment of taxes. I have to observe, that I found the greatest difficulty in procuring any Spanish law-books. The knowledge I possess of some of the authors I have mentioned, has been procured through the kindness of different judges and gentlemen, to whom they belong.

I have only got the Recopilacion of the Indies, though I have applied at London and on the main.

Question 5.—Do you know of any code of laws, or laws particularly framed by Spanish authority, for the administration of civil and criminal justice in this island?—*Answer.* I know of none. In the Recopilacion of the Indies is an edict, by which the laws of Castilla are to be followed in all cases, except where provision to the contrary be expressly made.

Question 6.—Have the decisions of the judges of alcaldes been regulated, so far as has come to your knowledge, by those laws and authorities?—*Answer.* They have.

GEORGE KNOX.

WILLIAM HOLMES,

Deputy Clerk of Council.

The honourable John Nihell, senior member of council, being sworn, the following questions were proposed to him.

Question 1.—How long have you been in the island?—*Answer.* A little above 20 years; and I have not been out of it during that time for one day.

Question 2.—Do you understand the Spanish language?—*Answer.* I think I understand it perfectly.

Question 3.—What official capacity did you hold, at the time of the capture of the island by the arms of his majesty, under sir Ralph Abercromby?—*Answer.* I was alcalde of the first election.

Question 4.—How long had you acted in that capacity, previous to that period?—*Answer.*—I was alcalde of the 2nd election the year immediately preceding the conquest of the island, and en-

tered into the office alcalde of the 1st election on the first of January following.

Question 5.—In what situations have you been in since the conquest of the island?—*Answer.* Sir Ralph Abercromby appointed me, by a commission under his hand and seal, chief judge chief magistrate and auditor over the whole island; and in addition to this commission, I received three years after another from brigadier-general Picton, appointing me chief judge of the Consulado or commercial court.

Question 6.—What laws and authorities did you consult and act upon, to regulate your legal decisions while you were in office?—*Answer.* The Cedula of king Charles the second of Spain, published in Madrid in 1680, directed that the collection of laws which that king had just then published, under the title of Recopilacion de leys de los Reynos de las Indias, should serve as a code for the decision of all and every species of laws in the colonies, however contrary they should be, in some instances, to the laws then in force; in Old Spain, however, the second law of the second book, title the first, of the same collection, ordains, that the laws of Castile should be followed whenever a case occurred which was not provided for by this code or collection of law. I therefore always considered the laws of Old Spain in full force in Trinidad, in all cases which were not provided for by a special law in the Recopilacion. Although I have, in obedience to the instructions received from sir Ralph Abercromby, omitted the tedious and expensive forms observed in the Spanish tribunals, and have endeavoured, as much as possible, to come at substantial justice, by means of arbitration, as recommended by sir Ralph, yet, as legal questions often occurred, I have been obliged in all such cases to follow the practice of the tribunals under the former Spanish government. By the advice of Don Juan Jurado y Layres, who was auditor and assessor general at the capture of the island, whom I considered as the most able Spanish lawyer I ever had an opportunity of being acquainted with, I have principally followed Elizondo, whose Practice of the Laws is calculated as fully for the tribunals of the Indies as for those of Spain. The edition which I made use of, was published so late as 1793, and certainly contains nothing but what was in full force in the Indies as well as Spain. I have found likewise, occasionally, great assistance from the Curia Philippica of Bonas, the Cinco Juicios of Febrero, and the Instructions of Colom, which were much esteemed, and which regulated the practice and decisions of all the tribunals under the late Spanish government.

Question 7.—Have you always continued to govern your decisions by the same laws and authorities, in the judicial offices you have filled since that time?

—*Answer.* The books which I cited in my last answer, explain almost every possible case which can come before a judge; and my conduct, in the different judicial situations that I have filled under the late Spanish and the present English government, has been invariably regulated by the rules which they lay down.

Question 8.—Do you know of any local code, or particular law, for the administration of civil and criminal justice by Spanish authority?—*Answer.* I know of none, except the Laws of the Indies, which is a very imperfect code and leaves innumerable cases to be regulated by the laws of Old Spain; the Royal Cedula of 1783 exempted this island from the general principle of colonial government in some particular respects, only particularly with respect to its intercourse and commerce with foreigners, and exemption from the alcavala and other taxes; the Cedula of 1793, for forming Consulado courts, regarded only commerce, and the different occurrences in the different parts where these courts were established; other Cédulas were occasionally granted for particular objects; but I am very confident that there does not exist any regular code to annul the laws which are in force in Spain, nor to direct the practice of the tribunals in any of the colonies.

Question 9.—Do you know, if any book you have before cited, contains any law authorizing the infliction of torture in any cases whatever?—*Answer.* Several of them do; but I particularize Elizondo, because it is impossible to doubt that the laws contained in this author are in force in the colonies; his Commentaries in eight volumes were written expressly for the information of the tribunals in the Indies; and my friend Don Juan Jurado was so anxious for my governing myself by the rules which he lays down, and forming my decisions according to the laws which he cites, that he made me a present of a complete set of them on my being appointed chief justice. This author cites the law for the infliction of torture very clearly, and points out the cases in which it is to be inflicted, in his first volume.

Question 10.—Do you therefore consider, that the above law is in force in the colony at the present day?—*Answer.* I most assuredly do; but judges are cautious how they inflict it.

JOHN NIELL,
Chief Justice.

WILLIAM HOLMES,
Deputy Clerk of Council.

COURT OF KING'S BENCH.

November 24, 47 Geo. 3rd, A. D. 1806.

The *Indictment* was read.

Lord *Ellenborough* read his report of the trial, and then proceeded as follows:—

The question I left to the jury was, whether the application of torture was consonant to the existing law of the island of Trinidad, at the time of the capitulation; I left it to them as a fact, reserving leave for Mr. Dallas to move for a new trial, on the ground of error as to the law of torture.

Mr. Dallas likewise contended, that the question whether the infliction of torture was malicious, should be left to the jury; but I thought, that, though there was no evidence of express malice, if the application of the torture was unlawful, the *malus animus* was to be implied; although I said, it might be a question very material for consideration in another place, when the defendant came up to receive judgment; because, the character of the act is marked by the intention; it might be a crime of a highly aggravated nature, or it might be a mere error, barely an offence, and highly venial.

Mr. Dallas also urged, that negative evidence ought to have been given, to prove that there was no reasonable or probable cause for inflicting the torture in the particular instance. I thought as to this, that it resolved itself entirely into a want of legal knowledge, which was no valid ground of defence, although it might operate in mitigation of punishment.

I left to the jury the question, whether the law of torture was within the fifth and seventh articles of his majesty's instructions to general Picton.

Assuming, from the authorities, that torture was applicable by the law of Spain, it did not necessarily follow, that it was the law of the Spanish colonies in the Indies; but negative evidence as to any practice of torture was given by Mr. Gourville, whose experience commenced in 1774; by Mr. Farfan, who has known the colonies from his birth; and by Mr. Nugent, who goes back to 1786; and this was confirmed by the testimony of Mr. Begor-rat and of Mr. Gloster, neither of whom can speak to any practice of torture, antecedently to December 1801, the date of the transaction in question; nor, indeed, were there any engines for its infliction, until general Picton introduced the piquet. I left that question to the jury upon the evidence; and they were of opinion, that, prior to the capitulation, there existed no system of torture under the laws of that country, and no practice from which such a law could be inferred. That is the best recollection I have of the points which I left to the jury.

Mr. *Dallas*.—Your lordship has very correctly reported the case. Your lordship left it to the jury to consider whether, by the Spa-

nish law, torture could be applied in the island of Trinidad; and the jury being of opinion that it could not, your lordship said they must find the defendant guilty.

Lord *Ellenborough*.—If he had no competent jurisdiction or authority to inflict torture, I was of opinion, that the infliction of that punishment would be a crime.

Mr. *Dallas*.—I humbly submitted to the Court that, whether by law he could inflict it or not, the question whether *he considered* that by law he could inflict it, was a distinct question; and that if, by the law of Spain he had jurisdiction over the particular case of Luisa Calderon, even if he came to an erroneous decision upon it, he was not liable to a criminal prosecution.

Lord *Ellenborough*.—I endeavoured at the time to put down your objections in the best shape I could, for the purpose of discussion. There are some affidavits with regard to the law upon the subject, which were sent from the island of Trinidad after the verdict against general Picton had reached that island.

Mr. *Garrow*.—My lords, before these affidavits are read, I feel it my duty, as counsel for the prosecution, to draw the attention of your lordships to the circumstances under which they come before the Court; at the same time wishing it to be distinctly understood, that, if your lordships shall think, that, consistently with the usual practice, they can be read in a criminal case, I make no objection to the Court adopting such a lenient course, and taking them into consideration. But I think I should betray my trust, if I did not draw the attention of the Court to these affidavits.

It appears, that upon hearing that a verdict of guilty had been pronounced against general Picton, the lieutenant-governor of the island of Trinidad, calling to his assistance the council of the island, entered into an inquiry for the professed purpose of ascertaining what was the law of the island, and whether the course pursued by general Picton was legal. These affidavits, which were made on that occasion, and which are now sought to be read, were not taken under the authority of this Court; they were not taken under a mandamus to examine witnesses; but they are perfectly voluntary, and, if untrue, it is impossible that any of the individuals making them can be punished: They come before the Court as a sort of *manifesto*, in opposition to what was done at the trial. If, however, notwithstanding what I have said, the Court should think it right to look into these affidavits, I make no objection to their doing so; but I thought it my duty to state the circumstances under which these affidavits are presented.

Lord *Ellenborough*.—What do they purport to be?

Mr. *Dallas*.—I will state to the Court. When I made application to your lordships for a new trial, I did so on the ground of there being a misrepresentation in a material part of the evidence (so material that it was the very point on which the whole depended), and of its being a misrepresentation of such a nature, that it was impossible for the defendant, by the exercise of any caution or industry on his part, to foresee or guard against it. At the trial, a book called the *Recopilacion*, containing a collection of laws which had been compiled for the government of the Spanish colonies, was produced by Mr. *Garrow*, for the purpose of showing, that, whatever might be the general law of Old Spain, there was a code distinct from that for the government of the colonies. The book was produced for the purpose of establishing that proposition; and M. de Vargas swore, that in that book there was not one word that referred to the infliction of torture; all of which undoubtedly was *literally* true. But, on looking into that book, although the word "torture" is not to be found, it turns out, that there is an express direction to the tribunals in the Spanish colonies to pursue the law of Spain (which allows of torture) in all cases in which the colonial code does not repeal the Spanish law; and, therefore, though the testimony of Vargas was *literally* true, it was *substantially* false; and the case went to the jury under that misrepresentation. In order to show, that it was impossible for general Picton to have foreseen, or to have provided against this, I filed an affidavit which does not fall within the range of my learned friend's observations.—

Mr. *Garrow*.—I do not object to that. I stated, that the affidavits to which I do object, were not sworn before any person properly appointed for the purpose.

Lord *Ellenborough*.—You said, they were not taken under the mandamus.

Mr. *Dallas*.—It was certainly necessary, in the first instance, to dispose of that: one affidavit then is liable to no objection.

With respect to the others, I do not at this moment know whether my learned friend means to object to them or not; and though I am always obliged to my learned friend for any boon he may offer, I certainly upon the present occasion wish to receive nothing from his lenity; if, therefore, he makes a legal objection to the reading of those affidavits which have been filed, I must meet that objection in the best way I can. At present I will just state how they come before the court.

While the investigation under the mandamus was going on in the island of Trinidad, it was assumed that, by the law of that island, the torture might be applied, although in the particular instance its application might have been improper. When the verdict of the jury negating the existence of such law, reached

the island, the governor general Hislop immediately convened a council to which all the members were summoned. They called before them all the persons who were conversant with the practice of the law, they examined them upon oath, and transmitted the minutes of their proceedings, as an act of state, to his majesty's ministers in this country. And the single question now is not whether they would be admissible evidence upon a new trial, but whether, in a case of this description, the court will refuse to examine a document, transmitted as an act of state, from the members of that government, to his majesty's government at home? If your lordships think that affidavits taken under such circumstances, and so transmitted to the government of this country, are to be thrown aside, and not looked at, it will be my duty to submit; but, until I hear it from the court I shall believe such a decision to be impossible.

Mr. *Garrow*.—I should have thought it extremely difficult for any person conversant with the practice of this place, to have misunderstood what I said. I did not intimate to my learned friend, that I intended to offer to him any boon, nor did I take merit to myself for any extraordinary lenity; but I stated in distinct terms, that I felt it to be my duty, as counsel for the prosecution, to apprize the court of the nature of the affidavits which were then about to be read, certainly not meaning to object to the other affidavit. But, if my learned friend asks me, whether I object to the reading of those affidavits that were transmitted from Trinidad to this country subsequent to the trial of general Picton, I say I am bound (more especially as they disclaim receiving any lenity) to tell your lordships, that according to the practice of this court such affidavits cannot be read. My objection to their being read is, that they are not under the sanction of any competent authority, and that the parties cannot be called in question if what they have sworn is not true. They are mere volunteers, and if any magistrate in Cornwall had called together his brother magistrates, and sent up to this court their opinions, such a document would be just as much entitled to your lordships' attention as these proceedings of the governor and council of Trinidad. But, my lords, I object to them on another ground: even if they were fit to be read they ought to have been put into proper shape, as is the practice, for instance, in respect of affidavits made in Ireland; we should then have had an opportunity of answering them. Without however entering into any detailed argument on this subject, what I meant distinctly to say, was this; that if the court, looking at all the circumstances of this case, shall think fit to have them read, I make no objection to their being read. I object to their being read, for the reasons I have stated; but still I am willing to waive my objection, if the court think that,

in a criminal case like this, it is desirable that they should be read; but then I say, that some opportunity should be afforded us of answering them.

Mr. *Stephen*.—My lords, I beg leave to say a very few words on this point. These papers have been very unfairly characterized as a manifesto against the proceedings of this court. If they are a manifesto pointed against any thing, it is against the evidence of M. de Vargas, upon the inaccuracy of whose testimony we have obtained a rule to show cause why there should not be a new trial. But, if there be any danger at all in reading these affidavits, it can only be the danger of receiving evidence of this description in a place of this kind. What is the evidence? It is the attestation upon oath, of public magistrates and judges, whose certificate I humbly submit to your lordships may, without any deviation from any rule of practice, be read for the purpose of informing the court what is the law of a foreign place, upon which law the present question so materially depends.

Hearing, as these parties did, in Trinidad, that the foundation of the decision of the jury was the account given by M. de Vargas—who represented that there was no law applicable to Trinidad but the *Recopilacion*; that he was acquainted with the laws of a great variety of places in the Spanish West Indies, including the island of Trinidad, that he knew of no instance of the infliction of torture, and that it was not even mentioned in the *Recopilacion*;—and knowing, as they did, that, in a great variety of instances, they had proceeded upon the law of Old Spain, they transmitted this document to the government of this country; and if these papers would have been evidence as *certificates*, I submit to your lordships that they are not less evidence as *affidavits*, and that their veracity is not impeached by the form in which they appear.

The question, at present, is not whether they would be evidence before a jury, but whether they can be listened to by your lordships, in a question whether a person, in the situation of a judge, has misadministered the law of that country in which he acted.

Mr. *Garrow*.—The word *manifesto*, which I used, was suggested to me by the preamble to this document, which I will read, and then your lordships will judge whether it justifies the expression or not, "Whereas sir Ralph Abercromby did order," &c. [the learned counsel here read the preamble, which see *ante* p. 572.] Now, my lords, these *ex parte* affidavits being taken under these circumstances, it did occur to me, that it was my duty to suggest, that if they were to be looked at, we on the other side should have an opportunity of answering them.

Lord *Ellenborough*.—It appears to me, that if in any case a certificate is receivable as evidence of the law of a country, a certificate

given under the circumstances in which this is stated to have been given, namely, for the justification of a party in this very cause, is certainly inadmissible; I do not know, that there is any thing to be found in the books to warrant it; it would be dangerous to make a precedent, from our anxiety to receive information, and I will not make one.

Mr. Justice *Grose*.—We cannot look at these affidavits without the other side having an opportunity of answering them.

Mr. *Dallas*.—We do not wish it without that opportunity. One of them is a certificate from the chief justice of the island.

Mr. Justice *Lawrence*.—How are we to act upon that? especially when it is a proceeding adopted in consequence of what has passed here; they take upon themselves to examine these people for the purpose of justifying their own acts.

Mr. Justice *Grose*.—It is quite a voluntary proceeding and not under the authority of this court.

Mr. *Dallas*.—It is not a return to this court.

Lord *Ellenborough*.—What is the affidavit about de Vargas's evidence? and how far is it stated to be a matter of surprise that the law was questioned?

Mr. *Dallas*.—I should state to your lordships, that among the affidavits transmitted from Trinidad to the secretary of state's office, there is one, not only shewing what the law of the island is, but mentioning a particular instance of torture having been decreed under similar circumstances.

Lord *Ellenborough*.—When was that? before the cession?

Mr. *Dallas*.—Yes, my lord; in 1792, five years before the capitulation, which took place in 1797.

Mr. Justice *Le Blanc*.—The affidavits were not taken under any writ of Mandamus, and this is one of those affidavits?

Mr. *Garrow*.—Yes my lord, it is.

Lord *Ellenborough*.—It is not taken under the authority of this court? it is not taken under the Mandamus?

Mr. *Dallas*.—No my lord; certainly not under the authority of this court.

Mr. *Garrow*.—It is to be observed that, unless the defendant had had a mandamus, and had examined these witnesses under the authority of it, these papers must be irregular.

Mr. Justice *Lawrence*.—What do your affidavits say about being surprised at this evidence of de Vargas? You were surprised by

the statement of de Vargas that this book, called the Recopilacion, contained no regulations authorizing torture, and that the laws of Old Spain, for the infliction of torture, were not introduced into the Spanish West Indies; you were not apprised that that point would be made, and had no opportunity to examine witnesses as to the law of the island on that subject.

Lord *Ellenborough*.—We had better have them read; they are but short. Let the affidavits respecting the evidence of Vargas about the Recopilacion be read.

[*The affidavit of Mr. Richard Walter Forbes was read; See it ante p. 545.*]

Lord *Ellenborough* [after consulting for a short time with the other judges].—Mr. *Garrow*; we think, that the affidavit of governor Picton is an affidavit of which we can take notice: from that it appears, that certain documents of which we cannot take notice, have been transmitted, as an act of state, from the island of Trinidad to the secretary of state's office here. These contain matters respecting the existence of the law of torture in that island, which it is extremely important to the defendant to establish. Now, these documents, to which general Picton's affidavit refers, we cannot advert to judicially, in the shape in which they are; they have come over to this country without any stamp of authority to enable us to read them, but they are described as containing certain facts and materials of which in a criminal case it is very desirable that the Court should be put in possession; but we wish to obtain that information in a legal form: Will there be any objection to have a commission sent out, that the evidence as to the law of torture may be received in such a way as that the Court can take cognizance of it?

Mr. Justice *Lawrence*.—It strikes me not to be fit, that we should take notice of these affidavits for the purposes of this motion for a new trial. But it is another question, whether there is not sufficient ground to make us pause before we dispose of the rule for a new trial; I think we have enough to raise doubts whether there is not this law of torture, and therefore I think that the rule for a new trial ought not to be disposed of until the facts are regularly brought before the Court upon a proper examination. There has been no opportunity of examining whether it is or is not the law, and I think that the rule should be enlarged until this is ascertained.

Mr. Justice *Grose*.—This gentleman must be considered as convicted; and if a motion were made for sentence on that conviction, I should think, that before considering what degree of punishment should be inflicted, this fact ought somehow or other to be ascertained; otherwise we should proceed in the dark.

Mr. *Garrow*.—I may venture to say, that

nothing ever proceeded from the bench that could be more flattering to a person in my situation, than what has now fallen from their lordships. It will be remembered, that in conducting a great public prosecution, I felt it to be my duty to object to these affidavits being read, and that in the next sentence I stated that if the Court thought fit to have that information laid before them, I did not object to it; and in the very same spirit in which I uttered that sentence, and in which I have conducted myself throughout every part of this proceeding, I must say, that I think what the Court suggests is fit and proper and ought to be adopted.

Lord *Ellenborough*.—You will take a mandamus to examine witnesses, with power for the other side to cross-examine them; that examination to be directed to these particular points; namely, whether torture existed in the island of Trinidad at the period of the capitulation, and whether torture might be applied to witnesses.

Mr. *Garrow*.—Perhaps there will be no objection to putting it in this way;—whether at the time of inflicting the punishment it was the law of Old Spain and still continues so, and whether that law obtained in Trinidad.

Lord *Ellenborough*.—You will be at liberty to examine as to these points;—supposing it to have been the law of Old Spain, whether it was incorporated into the laws of Trinidad? and supposing it has ceased to be the law of Old Spain, at what time it ceased to be so?

Mr. Justice *Le Blanc*.—And whether it is now the law of the island of Trinidad.

Lord *Ellenborough*.—I did not think that the *Recopilacion* was so scarce a book. It is repeatedly referred to by Dr. Robertson in his *History of America*, and I should have thought it would have been found in the university libraries.

THE RULE ENLARGED.

Lord *Ellenborough*.—It there any objection to the mandamus being directed to the same persons as the last?

Mr. *Nolan*.—Chief justice Nihell is one of these witnesses.

Mr. Justice *Lawrence*.—Then find out some other proper persons and let them be named.

Lord *Ellenborough*.—It might be more delicate to have no person giving evidence in this cause to preside under the commission.

Mr. *Garrow*.—What Mr. Nolan suggests is from delicacy.

Mr. *Nolan*.—The lieutenant-governor has also joined in this affidavit.

Lord *Ellenborough*.—Let it be as before.

We will not presume, that persons in such situations will do any thing improper. The evidence will doubtless be properly recorded: it will be done in the face of day: and it would be degrading to suppose, that there will be any clandestine proceedings.

This writ of Mandamus, bearing date November 24th, was in every respect a copy of that which had been first issued; see it *anté*, p. 226.

The following is a copy of the return; it was filed of Trinity Term, 47, Geo. III, A. D. 1807.

TRINIDAD.

I humbly certify and make known to his majesty, in his Court of King's Bench at Westminster, that by virtue of this writ of mandamus, I gave public notice of a court to be holden on Friday, the 10th day of April instant, at Port of Spain, in the said island, for the purposes in the said writ mentioned, and that such court was accordingly then and there held, and from thence continued by adjournment from time to time, till on Saturday the 18th day of April instant, when the examinations of the witnesses, and other proofs on the part of the within named Thomas Picton, esquire, were closed and the court adjourned *sine die*. And I further certify, that the said examinations (contained in sixteen sheets of paper), taken before me, by John Lewis, esquire, the person duly sworn to take the same, and all other proofs, matters, and things relating thereto are hereunto annexed. Given under my hand at Government-house, in the said island of Trinidad, the 18th day of April, in the 47th year of the reign of his majesty, king George the Third; And in the year of our Lord 1807.

T. HISLOP, Governor.

TRINIDAD.

At a court holden at the council chamber in Government-house, Port of Spain, in the said island of Trinidad, on Friday the 10th day of April, in the 47th year of the reign of our sovereign lord George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland, King Defender of the Faith, and in the year of our Lord 1807, pursuant to public notice given thereof, before his excellency Thomas Hislop, esquire, governor and commander-in-chief in and over the said island, by virtue of a certain writ of mandamus issued out of his majesty's Court of King's Bench, at Westminster, bearing date, the 24th day of November last, for the examination of witnesses, and receiving other proofs

concerning the matters charged in a certain indictment, found in his said majesty's Court of King's Bench, against Thomas Picton, esquire, on behalf of his majesty, on the prosecution of Luisa Calderon.

THE COURT being duly opened by proclamation, John Lewis, esquire, was appointed by his excellency the governor to officiate as clerk of the said court, and he was duly sworn, faithfully and honestly, to reduce into writing, all and every such evidence and examinations of the witnesses, and other proofs as should be given and produced to the court concerning the matters charged in the said indictment.

The KING,

On the prosecution of

LUISA CALDERON,

against

THOMAS PICTON, Esq.

Upon reading the rule made in this prosecution, in his majesty's Court of King's Bench at Westminster, on Monday next after the Octave of Saint Martin, in the 47th year of king George the Third, and also the writ of mandamus issued thereupon out of the said Court of King's Bench,

It is ordered, that the same be filed with the clerk of this court.

Silvester Newman, esquire, deputy provost marshal of the said island, a witness called sworn and examined, to prove the notice given of holding this court under the same writ of mandamus.

Question.—Did you stick up a copy or copies of the notice now produced, and shown to you, marked with the letter (A.)? If yea, state when and where.

Answer.—I stuck up two copies of it, on Wednesday the eighth day of April instant, on the notice-post at the lower end of Frederick-street, and another at the public-wharf.

(A)

TRINIDAD.

By his Excellency Thomas Hislop, Esquire, Governor and Commander-in-chief, in and over the said Island, and its Dependencies, &c. &c. &c.

Whereas, I have received his majesty's writ of mandamus, issued out of his Court of King's Bench at Westminster, dated the 24th day of November last, authorising and commanding me to hold a court session or meeting for the examination of witnesses, and receiving other proofs concerning the matters charged in a certain indictment, found in the said Court of King's Bench, against

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Thomas Picton, esquire, on the prosecution of Luisa Calderon: Notice is hereby given, and I do hereby proclaim and make known, that a court will be holden for that purpose, on Friday the 10th day of April instant, at the council chamber, Government-house, in Port of Spain, in the said island, at ten o'clock in the forenoon, when and where all persons concerned are desired to attend.

Given under my hand at Government-house, at Port of Spain, in the island aforesaid, the 7th day of April 1807, in the 47th year of his majesty's reign.

T. HISLOP.

Mr. *Attorney General*, Mr. Gloster, stated to the court, that he appeared in this court, not as advocate for the defendant in the present instance, in which capacity he had before officiated here, but in his capacity of law officer of the crown in this colony, to have his majesty's Court of King's Bench at Westminster, informed as to the laws of Old Spain and Trinidad, with respect to the infliction of torture, at the time of the capture of this island in 1797; particularly as the Court of King's Bench had confined the inquiry under the mandamus to that isolated point: to which his excellency the governor was pleased to signify his approbation.

Manuel de Garmondia, public and cabildo escrivano, a witness produced and sworn and examined by interpretation in the Spanish language (Henry Coryat, gentleman, being first sworn as interpreter).

Question.—What was the law of Old Spain and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?

Answer.—The laws that existed in Old Spain and this colony at the time of the capture of the island in 1797, are the same as those now in force here.

They are the *Recopilacion des Indies*, the *Recopilacion de Castilla*, the *Laws of the Seven Partidas*, and warranted by Elizondo, Colom, Febrero, Martinez, Bobadilla, Curia Phillipica, and Herrera; which laws ordain, that the torture may be inflicted on a prisoner for his crime, to force him to declare what persons were accomplices in the crime, when there is a presumption to believe that others were concerned in it, whether it be for false coining, offences against the crown, theft, or robbery. The law authorizes the torture to be inflicted on the accomplice, as well as on the principal, to discover the truth; and likewise to a witness, for the same, when he prevaricates on his oath

under examination. The laws which I have mentioned, have not been annulled or repealed by any law or edict of Spain, that I know or have heard of.

MANUEL DE GARMONDIA.

H. CORYAT,
Interpreter.

Josef de Orosco, public *escrivano*, a witness produced sworn and examined by interpretation in the Spanish language.

Question.—How long have you resided in this colony, and practised as an *Escrivano* under the Spanish law?—*Answer*. I have resided in the island 16 years, and practised as an *escrivano* for about two years.

Question.—What was the law of Old Spain, and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer*. The same laws are in force in Trinidad at this day, with respect to torture, as were in force at the capture of the island in 1797. Those laws are, the laws of Castille, the laws of the Indies, the Seven Partidas; as appears by the Spanish authors of the *Curia Philippica*, *Colom*, *Febrero*, *Elizondo*, *Herrera*, *Bobadilla*, and other authors, who have written on the subject of torture. All those laws recognize and authorize the torture to be inflicted in case of robbery, or other heinous crimes, on the principal, the accomplice, and witnesses, to come at the truth.

JOSEPH DE OROSCO.

H. CORYAT,
Interpreter.

Francis Lubault, Attorney to the tribunal of the *alcaldes* in ordinary, and defender of absentees, a witness produced and sworn and examined, by interpretation, in the Spanish language.

Question.—How long have you resided in Trinidad, and practised the Spanish law?—*Answer*. I have lived here about 22 years, and practised the law during that time.

Question.—What was the law of Old Spain, and Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer*. The laws authorizing the infliction of torture, at the time of the capture of the island in 1797, were the *Recopilacion des Indies*, the *Recopilacion of Castille*, the *Seven Partidas*, and also the authors *Elizondo*, *Curia Philippica*, *Colom*, *Febrero*, and many others, who have written on the cases of torture. The

laws which I have stated authorize the torture to be inflicted on the accused, and also on a witness, in case of prevarication, to discover the truth of any heinous crime committed; and likewise on the principal, to compel him to discover his accomplices, when a presumption arises of there having been others concerned in the crime.

FRANCIS LUBAULT.

H. CORYAT,
Interpreter.

Adjourned, by Proclamation, to Saturday, the 11th. of April, instant, to then sit again at twelve o'clock.

J. LEWIS,
Clerk of the Court.

TRINIDAD.

At a Court holden by adjournment, at the Council-chamber, in Government-house, at Port of Spain, in the island of Trinidad, on Saturday the 11th day of April, in the 47th year of king George the third, and in the year of our Lord, 1807. Before his excellency, Thomas Hislop, esquire, governor of the said island, by virtue of the writ of *Mandamus aforesaid*, and for the purposes aforesaid.

Francisco de Castro, government *escrivano*, and keeper of the criminal records and processes in the said island, a witness produced, sworn, and examined, by interpretation, in the Spanish language.

Question.—How long have you resided in this colony, and practised the Spanish law?—*Answer*. I have resided here more than 20 years, and practised the Spanish law, as an *escrivano*, during that time.

Question.—What was the law of Old Spain, and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer*. At the time of the conquest of the island in 1797, the infliction of torture was authorized by the laws of Old Spain and of Trinidad, in cases of thefts, robbery, and heinous offences, as well upon the principal, as on the accomplices and witnesses, whenever they prevaricated under examination.

Question.—Upon what is your assertion grounded?—*Answer*. Upon the *Recopilacion de las Indias*, the *Recopilacion de Castilla*, the *Seven Partidas of Sapiant king Alonzo*, and the authors *Herrera*, *Bobadilla*, *Elizondo's Practica Universal Forense*, *Colom*, *Febrero*, and others.

Question.—Were those books and au-

thorities looked upon as law, at Trinidad, at the conquest of the island in 1797, and were they ever acted upon as such?

—*Answer.* Yes.

Question.—Do the Recopilacion of the Indies, in any wise, alter, abrogate, or annul, the other books which you have mentioned?—*Answer.* No.

Question.—In case where the laws of the Indies do not apply, or provide a remedy, to what laws did the tribunals recur, at the time of the capture of the island in 1797?—*Answer.* To the laws of Castile, and in case of their being deficient on the subject to the Seven Partidas.

Question.—Have you ever known the law authorizing the infliction of torture, to have been acted upon in this colony, previous to the capture of it in 1797?—

Answer. Yes, in a prosecution carried on against one Francisco, a Negro man, in the year 1790 and 1791.

Question.—Was you the escrivano employed in that prosecution?—*Answer.* Yes.

Question.—Have you the original proceedings in such prosecution, or what has become of them?—*Answer.* I have not got them, nor do I know where they are.

Question.—As keeper of the criminal records, and escrivano in the cause, have you any authenticated record or copy of them? If yea, state when and by whom it was made?—*Answer.* Yes, I have. I made a copy of them in the year 1791, when they were remitted to the royal audience of Caraccas, for confirmation of the sentence given of inflicting torture on the prisoner Francisco.

Question.—Where is such copy of the original proceedings?—*Answer.* It is with me.

Question.—Will you produce it?—*Answer.* Yes, and I now do produce it, contained in one hundred and sixty manuscript folios.

Question.—Is the copy now produced by you, marked (B.)* and contained in Folios, a true and faithful copy of the original proceedings transmitted to the Caraccas, and made, and compared, and examined by yourself with the original, at the time you have stated?—*Answer.* Yes.

Question.—Was this copy a duplicate of the proceedings, made and kept by you, in conformity to your duty, as keeper of the criminal records, and escrivano in the prosecution, and the usual practice?—*Answer.* Yes.

Question.—Has it been altered, added to, or diminished, in any respect?—*Answer.* No, except as to the process against

the gaoler and others, which is annexed to it, for having permitted Francisco the prisoner to escape.

Question.—Is it now, with the exception of the process annexed to it, in the same state and condition as it was at the time the original proceedings were sent to the Caraccas?—*Answer.* Yes.

Question.—Would it not, at the Caraccas, or before any other Spanish tribunal, have the same force and validity as the original itself would have, in case of its being lost?—*Answer.* It would have the force and effect as the original.

Question.—Was the sentence of torture, contained in the original process, confirmed, approved, or disapproved, by the royal audience of Caraccas?—*Answer.* It was confirmed and approved.

Question.—Was the sentence of torture, so approved, put in execution?—*Answer.* No.

Question.—Why not?—*Answer.* Because the proceedings, with the confirmation of the sentence of torture, were not returned to the tribunal, and the prisoner having made his escape almost immediately on the arrival of the proceedings from the Caraccas.

Question.—Do you believe that the sentence of torture would have been put in execution, if the proceedings had been transmitted to the tribunal, and if the prisoner had not escaped?—*Answer.* Yes; most undoubtedly it would.

Question.—As the original proceedings were not forwarded to the Tribunal after their arrival from the Caraccas, how do you know, that the royal audience of Caraccas approved of, and confirmed the sentence?—*Answer.* The then assessor-general, El Licenciado Don Blas Savinon, communicated to me that the sentence had received confirmation at the Caraccas, and that the original proceedings had arrived from thence.

Question.—By whom were the original proceedings sent to the Caraccas, and to whom were they returned?—*Answer.* By the judge Don Mathias Litamendi; but I do not know to whom they were returned.

Question.—Was the sentence of torture given with the approbation and advice of the assessor-general, Don Blas Savinon?—*Answer.* Yes, and he signed it with the judge.

Question.—Is Don Blas Savinon dead or alive?—*Answer.* He is dead, he died at Barcelona, in or about the year 1796.

Question.—How long were the original proceedings at the Caraccas, before they were returned to Trinidad?—*Answer.* About twelve months.

Question.—Did the prisoner, Francisco, remain in gaol during the whole time he was under examination, and whilst the

* See it *infra* p. 606.

proceedings were at the Caraccas?—*Answer.* Yes.

Question.—Do you know where the original proceedings now are?—*Answer.* No.

Question.—Did the royal Cedula of the king of Spain, published in 1783, annul, make void, or suspend, the infliction of torture, or any other criminal law of Spain in force in this colony?—*Answer.* No; it does not relate to any criminal law.

FRANCISCO DE CASTRO.

H. CORYAT,
Interpreter.

Jean Marie Dancla, esq. Alcalde of the first election, a witness produced, and sworn, and examined, by interpretation, in the Spanish language.

Question.—How long have you resided in Trinidad?—*Answer.* Nineteen years.

Question.—What was the law of Old Spain, and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer.* At the capture of the island in 1797, the laws of Old Spain were in force, and are now in force here; those laws are the Recopilacion of the Indies, the Seven Partidas of the sapient king Alonzo, the Recopilacion of Castilla, and the authors Bobadilla, Elizondo, Herrera's criminal law, Colom, and Febrero, which laws and authors warrant the infliction of torture.

J. M. DANCLA.

H. CORYAT,
Interpreter.

Bartholomew Portel, esq. alcalde in ordinary in the first election, a witness produced, and sworn, and examined, by interpretation, in the Spanish language.

Question.—How long have you resided in Trinidad, and what situation have you held under the government of it?—*Answer.* I was born in this island, and have been regidor, alguazil, mayor, and alcalde of the first and second election.

Question.—What was the law of Old Spain, and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer.* The laws of Old Spain, and of this island, at the time of the conquest of it in 1797, as to the infliction of torture, is to be found in the Recopilacion de las Indias, the Recopilacion of Castille, the Seven Partidas of the sapient king Alonzo, and its Gregorian Glossary, and the different authors who have written on the subject, as Boba-

dilla, Herrera, Curia Philippica, Colom, Elizondo, Febrero, and others all those laws were in force in the colony when it surrendered; in 1797, and they have not since been annulled or contradicted, by any law or royal Cedula of Spain to my knowledge or belief.

Not signed.

H. CORYAT,
Interpreter.

Don Antonia Andilla, public and cabildo escrivano, a witness produced, and sworn, and examined, by interpretation, in the Spanish language.

Question.—How long have you resided at Trinidad, and practised as an escrivano?—*Answer.* I have resided here since the year 1790, and I have practised as an escrivano ever since.

Question.—What was the law of Old Spain, and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer.* In the year 1797 at the capture of the island, and ever since, the laws of Old Spain were and are in force; those laws are the Recopilacion of the laws of the Indies, the New Recopilacion of Castille, the Seven Partidas of the sapient king Alonzo, and the laws sanctioned by the authors of the Curia Philippica, Elizondo's Instructions to the judges, Bobadilla's Instructions to the judges, Colom, Febrero, and others. And all those laws and authors sanction and authorize the infliction of torture on criminals in particular cases, as for robbery, murder, theft, and other heinous crimes, to discover the truth; and likewise on the accomplice, and witnesses, in case of their prevaricating on their examination.

Question.—Have you ever seen, or do you know of any Edict, or Cedula of the king of Spain, that annuls or suspends the torture in being inflicted on persons who may be guilty of any of the offences which you have mentioned?—*Answer.* No; nor do I believe that any such Edict or Cedula ever was made, or came to this colony; and as secretary of the cabildo, I should have known of it if it had been the case.

ANTONIA ANDILLA.

H. CORYAT,
Interpreter.

The Hon. *John Nihell*, esq. chief judge, chief magistrate and auditor of this island, a witness produced, sworn, and examined.

Question.—How long have you resided in Trinidad, and presided as judge, in the civil and criminal tribunals of this island?—*Answer.* I have been a con-

stant resident in the colony for 21 years past, and have, during that time, passed through every office of distinction in the government, except that of governor. I was alcalde of the second appointment during the year 1796. At the opening of the courts in 1797, I was chosen alcalde of the first election, and was in that situation when the island was taken. I was then appointed chief judge &c. of the island, by special commission from sir Ralph Abercrombie. I am also judge of the consulado or commercial court, and of the instance court of vice-admiralty.

Question.—Do you understand the Spanish language, and the Spanish laws that govern the colony?—*Answer.* I think I perfectly understand the Spanish language, and having presided so many years in the highest tribunals of justice in the colony, with the advantage of a regular college education, it would be strange indeed if I had not acquired a tolerable and general knowledge of the Spanish laws, although not regularly educated for the bar.

Question.—What was the law of Old Spain and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer.* The law of torture was taken from the Roman code, and introduced amongst the laws of Old Spain, called the *Siété Partidas*, by Alfonso the Wise, at the Cortes held at Alcala Herbares in 1348. The *Siété Partidas* are in the highest repute in Spain and the Indies, and they form a code of laws by which all the tribunals of the Indies and Old Spain have been governed from the days of Alfonso to the present time. In these Seven Partidas, particularly in the third and seventh, the law of torture is not only ordered to be enforced, but all cases in which it is to be inflicted are very circumstantially explained. The law of torture as in force in Trinidad, at the time of the conquest of the island in 1797, and in all other parts of the Spanish dominions, is likewise explained in a very satisfactory manner by Bolanos, in his *Curia Philippica*, and also by Elizondo, in his *Universal Practice of the Tribunals of Old Spain and the Indies*. Elizondo in volume 1, page 274, seventh edition published at Madrid in 1788, explains the different species of torture made use of by the ancient Spaniards, and those made use of at present. He tells us, in pages 275, 276 and 7, what proofs are sufficient to justify suspicion in a judge, to authorize his inflicting the torture. Bolanos, in his *Curia Philippica* published at Madrid in 1790, explains in a more detailed and satisfactory manner

all the cases in Elizondo, in which torture may be inflicted. In all cases in which crimes are punishable with death or corporal punishment, such as murder, theft, sodomy, falsecoining, or other crimes of a secret or hidden nature, the criminal maybe put to the torture on slight grounds. But, when the punishment for the crimes is only pecuniary, judges in general are not authorized to inflict the torture without strong and probable reasons for suspecting guilt in the person accused. The torture may be applied to all persons whatsoever except a minor of less than fourteen, an old decrepid person, a pregnant woman, a woman not till forty days after delivery, a priest, a soldier, a knight, a nobleman or one noble born, a doctor of laws, a master of arts, a king's counsel, and a counsellor or regidor of a town if they are of good fame. Bolanos also says, in the fourth section, page 229, that in all cases in which the torture may be applied to a criminal it may also be applied to a witness who varies in his relation of facts or denies the truth, when there is a presumption that he knows it. He tells us again, that the guilty person may be put to the torture to make him declare his accomplices, when there is a presumption that he had any. Philip the Second of Spain, by an edict of the ninth of July 1750, prohibited the use of torture when the crime was clearly proved, but this edict did not repeal the law of torture. The learned authors, Elizondo and Bolanos, have written so late as 1788, 1790, and 1792, on the law of torture, for the express purpose of directing the practice of the tribunals of the Indies, as well as those of Spain.

Question.—Was the infliction of torture authorised by the *Recopilacion de las Indias*, at the time of the capture of Trinidad in 1797?—*Answer.* I know but of one law amongst the laws which are called the laws of the Indies, that says any thing of the law of torture. This law is the fourth law, in book the ninth, title third, page 47 of the third volume, of the fourth edition, printed at Madrid in 1791. In speaking of sentences of torture pronounced by a court of *Tueces Letrados* (that is, composed of judges who are lawyers), it says, that such sentences may be executed without further appeal, meaning to a superior tribunal. The other volumes of the laws of the Indies are silent with respect to the law of torture, and they neither order nor forbid the use of it.

Question.—Where the laws of the Indies are silent as to any particular matter of law or practice, do they direct or order that recourse shall be had to any other laws?—*Answer.* The laws of the Indies are a very imperfect code, and

they leave innumerable cases to be regulated and decided by the laws of Old Spain. The Cedula of king Charles the Second of Spain, published at Madrid in 1680, directs that the collection of laws which that king had just then published, under the title of the "Recopilacion de Leyes de las Reynos de las Indias" should serve as a code for the decision of all and every species of law-suits in the colonies (that is, where they are applicable) however contrary they should be in some instances, to the laws then in force in Old Spain. The second book, title first, of the same collection ordains, that the laws of Castille, and other laws of Spain, should be followed whenever a case occurred, which was not provided for by this code or collection of laws of the Indies. I know of no other code of laws peculiar to the Indies.

Question.—Did not the Cedula of 1783, issued by the king of Spain, alter, suspend, or annul the law of torture of Old Spain or of Trinidad?—*Answer.* The royal Cedula of 1783 made no alteration whatever in the criminal law of Old Spain or Trinidad. It only exempted this island from the general principle of colonial government in some respects, and particularly with respect to its intercourse and commerce with foreigners, in naturalizing them, in granting lands to them, and in exempting them from the alcavala (or payment of duty on things sold), and other taxes for a certain number of years; and I can venture to state, that there does not exist any Cedula or edict of any of the kings of Spain, or any other authority in Old Spain, that abolishes the law of torture, either in Spain or in the Indies. I am positive of this, because I know that several books have been lately written, and many attempts made to effect a repeal of the law authorizing the infliction of torture, but without avail.

Question.—Were the laws of the Seven Partidas, and the authors Elizondo and Bolanos, looked upon and considered the law in Trinidad, at the time of the capture of the island?—*Answer.* Yes; Elizondo and Bolanos were particularly recommended to me by governor Chacon, as guides for my conduct in my official situation of chief judge, at the conquest of the island, and also by his assessor, general Don Juan Jurado y Laynes, who was considered as the most able Spanish lawyer that ever appeared in Trinidad; and who on account of his abilities as a lawyer, was after the conquest of the island appointed auditor and assessor to the captain-general of Caraccas.

Question.—Can you undertake to say, that the law of Old Spain, with respect to

the infliction of torture, was a part of a law of Trinidad at the time of the capture of the island in 1797?—*Answer.* Yes. I have read, and studied, several Spanish authors, on the subject of the law of torture; some of them have written in favour of it—to show the use and necessity of it; others have written against it—to prove, that it ought to be abolished. But, not one of them has attempted to say, that it was abolished, or was not in force either in Spain or the Indies; and it appears strange to me, that the question, that the law of torture not being in force in this island should be agitated. There cannot exist at this day a possibility of doubt, that the law of Old Spain with respect to torture was in force in Trinidad, and was part of the law of the island at the time of the conquest of it in 1797; unless it can be made appear, that Trinidad was not a Spanish colony at that time.

JOHN NIELL.

The court adjourned, by proclamation, to Monday the 13th day of April, to ten o'clock.

J. LEWIS, Clerk of the Court.

TRINIDAD.

At a court, holden by adjournment, at the council chamber, in Government-house, at Port of Spain, in the said island of Trinidad, on Monday the 13th day of April, in the 47th year of the reign of king George the Third, and in the year of our Lord 1807—Before his excellency Thomas Hislop, esquire, governor of the said island, by virtue of the writ of Mandamus aforesaid, for the purposes in the said writ mentioned.

The court being opened by proclamation, was adjourned by proclamation, to Wednesday the 15th day of April instant, to ten o'clock in the forenoon.

J. LEWIS, Clerk of the Court.

TRINIDAD.

At a court, holden by adjournment, at the council chamber, Government-house, at Port of Spain, in the said island, on Wednesday the fifteenth day of April, in the forty-seventh year of the reign of king George the Third, and in the year of our Lord one thousand eight hundred and seven—Before his excellency Thomas Hislop, esquire, governor of the said island, by virtue of the writ of Mandamus aforesaid, for the purposes aforesaid in the said writ mentioned.—Proclamation made for opening the court.

George Knor esquire, a witness called sworn and examined.

Question.—What was the law of Old

Spain and the island of Trinidad, or either of them, at the time of the surrender of the said island to his majesty's arms in 1797, with respect to the infliction of torture?—*Answer.* I was not in this island, at the time of its capture; but I have practised in the different Spanish and English tribunals of this island, since the beginning of the year 1803. In the various civil and criminal processes in which I have been engaged in the Spanish tribunals, the pleadings, judgments, sentences, and decrees, have ever been drawn from the laws of Old Spain, in all cases wherein the Recopilacion de Leyes de las Indias (that is to say, the collection of the edicts of the different kings of Spain, in respect to the colonies), has not provided to the contrary. The laws of Old Spain and of this island are, like all other foreign laws, founded on the civil or Roman law. By that the infliction of torture is not only allowed but prescribed. The laws of Spain and of this island as they existed at the time of its surrender to the British forces in 1797, proceeding on the same principles, have authorized and ordained application of the question "to culprits, accomplices, and witnesses, in numerous instances to discover the truth." These instances in which torture is allowed and prescribed, are fully stated in Bolano's Curia Philippica; in the laws of Spain as collected by Alonzo the Wise under seven heads, and edited by Gregory Lopez; in Elizondo's Practice of the Tribunals; in Munos Attorney's Practice; in the Collection of the Laws of Castille; in Febrero, on the five Forms of Action; in Bobadilla, on Criminal Law; and in Colom's Instructions for the Escrivano—books which in this island have ever been considered as law books of the highest authority—books to which the different judges, and lawyers constantly refer, in almost every cause—books which are as much respected in the Spanish tribunals of this island as Foster's, Hale's, Hawkins', or any other treatise on criminal law, recognized in Westminster Hall.

GEO. KNOX.

It being signified to the court on behalf of the deft., that he had no other witnesses to call, or further proofs to produce, the court adjourned, by proclamation, to Saturday the 18th day of April instant, to ten o'clock in the morning. And ordered, that the examinations and proceedings should be then closed.

J. LEWIS, Clerk of the Court.

TRINIDAD.

At a court holden by adjournment, at the council chamber, in government-house, at Port of Spain, in the said island

of Trinidad, on Saturday the 18th day of April, in the 47th year of the reign of king George the Third, and in the year of our Lord 1807—Before his excellency, Thomas Hislop, esquire, governor of the said island, by virtue of the writ of Mandamus aforesaid, for the purposes aforesaid, in the said writ mentioned.

Proclamation being made for opening the court, and the examinations and proceedings being finally closed; it is ordered, that the court stand adjourned *sine die*. And it was adjourned accordingly.

T. HISLOP,
Governor.

J. LEWIS,
Clerk of the Court.

(B.)*

[Translated from the Spanish, by John Le Gay.]

In the year 1790.

Title.

File of Acts, No. 87,

DOCUMENT of the criminal proceedings officially prosecuted against Francisco, the negro slave of Don Manuel Sorrano, relative to the murder committed on another slave, called Andres, belonging to Mr. Joseph; the originals whereof were transmitted to the royal court of audience of the district.

Judge,

The Chief Magistrate, or Mayor by election.

Notary,

DON FRANCISCO DE CASTRO.

In the port of Spain, in this windward island of Trinidad, on the fifteenth day of August, in the year one thousand seven hundred and ninety, his honor Don Pedro de Ybarrarte, ordinary judge or mayor by first election, on the behalf of his majesty, declared that whereas at the present moment, it now being about the hour of three o'clock in the morning, the captain of the patrol had just acquainted him, that in the street of Saint Carlos, in this said city, a murder had been committed, on the body of a negro, without its being known who was the aggressor; in consequence whereof, and for the purpose of discovering and ascertaining the delinquents and accomplices, his honor declared, that he was bound to command, and accordingly he hereby commands, that the dead body be

* *Vide* the evidence of Francisco de Castro *antè*. p. 597.

immediately conveyed to the Royal hospital, that the wounds inflicted thereon may be examined by the surgeons, Don Antonio Paniza, and Don Juan Bautista Barro, who are to declare, on their oath, by what kind of instrument or weapon the said wounds may have been inflicted, as also all whatever else they may come to the knowledge of by their professional skill and judgment; and when this shall have been accomplished, the first informations or examinations are to be taken of such witnesses that may be met with, and who may know any thing of the circumstances, examining them minutely with respect to the act, the origin of this process, for the purpose of fully ascertaining the parties, either the perpetrators or accomplices, attaching their effects, should they be possessed of any, which shall be lodged in a safe deposit, and when the same shall have been accomplished in due form, the proceedings are to be duly produced, that such decree may be pronounced thereon as may conduce to the right administration of justice; appointing, and by virtue hereof the licentiate Don Blas de Savinon is appointed to act as assessor, or counsellor, for the prosecution of this cause, to whom said nomination must be notified; and by virtue hereof, his honor thus pronounced and decreed, and he signed these presents, which I the notary hereby certify.

PEDRO DE YBARRARTE.

In the presence of me,

FRANCISCO DE CASTRO,
Notary Public, and Notary to the Government.

Legal Proceeding.]—Whereupon, immediately afterwards, his honor the mayor by first election, attended by the chief police officer of his tribunal who was summoned for that purpose, and together with me, the notary, proceeded to the street of San Carlos in this city; and being there arrived, we there found the dead body of a negro, with a large wound on the left side, with a great quantity of his blood on the ground, which said body, by the order of his honor the judge was conveyed to the royal hospital, and deposited in the usual and customary place. All which I certify,

FRANCISCO DE CASTRO,
Notary Public.

Notification.]—I went to the house of the licentiate Don Blas de Savinon, and notified to him personally the nomination made of him, as expressed in the act, which I certify.

CASTRO, Notary.

Legal Proceeding.]—On the same day month and year, Don Manuel Sor-

rano, the owner of the negro Francisco, sent him, properly secured, before his tribunal, for the due administration of justice; and thereof I make this minute in the proceedings, by order of his honor the mayor, which I certify.

CASTRO, Notary.

In pursuance of the foregoing proceeding, his honor declared that he was bound to order, and accordingly he ordered, the negro Francisco to be committed to the royal prison, for the security of his person, and to be lodged in safe custody, under the responsibility of the chief police officer or jailor, to whom the same must be notified by the notary of these proceedings, who is to certify the same.

YBARRARTE.

Licentiate, SAVINON.

It was thus decreed by his honor the mayor by first election, with the assent of the counsellor of this cause, who signed these presents, in the port of Spain, on the fifteenth day of August in the year one thousand seven hundred and ninety which I certify, in the presence of me.

FRANCISCO DE CASTRO,
Notary Public,

Commitment to Prison.]—I hereby certify, that the officer of the Court, attended by a soldier, made declaration to me, that they had conveyed Francisco to the royal prison, without their having touched or entered any consecrated place; and I hereby also declare to having proceeded to the said prison, and seen him properly secured; and in testimony thereof, I make this minute in the proceedings, in pursuance of the order of the said judge, on the said day month and year.

CASTRO, Notary.

Another.]—Thereupon, I made known the foregoing act to the chief police officer or jailor, who being duly made acquainted therewith, he signed these presents, together with me, which I certify.

GOUBERT.

CASTRO, Notary.

Act.]—Whereas it is provisionally requisite for the better administration of justice, and to the intent that there may be no escape from justice by any omission, I hereby in due form recommend, that an application officially in writing be made separately, to the governor and captain commandant-general, that his lordship may be pleased to grant the favor of ordering every necessary assistance, in certain proceedings, to be practised and adopted in this cause, on board the

Guarda Costa or coasting vessel, with the crew thereof; and when so done, that the said official note may be annexed to these proceedings, and by virtue hereof. It was thus pronounced and decreed by his honor, the judge of the first election, with the assent of the counsellor in this cause who signed these presents, in this port of Spain, on the fifteenth day of August, in the year one thousand seven hundred and ninety; which I certify.

YBARRARTE.

SAVINON.

In the presence of me,

FRANCISCO DE CASTRO,
Notary Public.

Note.]—That a separate note or memorial was presented to the governor and commandant-general, which I certify.

CASTRO, Notary.

Note.]—That the said note, or memorial, was replied to by the governor and commandant-general, and the same was annexed, on the same day of the date thereof, to these proceedings, in pursuance of the decree herein-before inserted, which I certify.

CASTRO, Notary.

It is requisite, for the right administration of justice, that your lordship may be pleased to grant me assistance and authority, that I may, in company of the counsellor in this cause, and the notary, proceed immediately on board the Guarda Costa, or coasting vessel, to adopt and practise certain legal steps, to ascertain the aggression and facts that occasioned the murder that was committed early this morning, this said application being duly inserted in the acts. May God preserve your lordship many years.

Port of Spain, on the fifteenth day of August, in the year one thousand seven hundred and ninety.

PEDRO DE YBARRARTE.

To his Excellency, the Governor and Commandant-general.

In pursuance of the foregoing official application made to me, the commander of the Guarda Costa or coasting vessel and all other officers whom it may concern are hereby directed to give his honor, the judge of the first election, every assistance he may require, for the purposes expressed in the aforesaid application to me. Port of Spain, on the fifteenth day of August, in the year one thousand seven hundred and ninety.

JOSEF MARIA CHACON.

Immediately afterwards I summoned the two surgeons, that were appointed for

the purposes as herein-before described.

CASTRO, Notary.

Whereupon the aforesaid two surgeons personally appeared in the Court of his honor the judge of the first election, that were appointed to examine the dead body; to whom his honor the judge, in the presence of me the notary, administered the oath, which they accepted, on God our Lord, and on the Sign of the Cross; and thereon they promised to declare the truth of the circumstances they had observed in the dead body, that he had ordered them to inspect; which they fulfilled in manner as follows; they deposed to there being a wound, inflicted by a pointed and cutting instrument, on the left side in the fore part of the body and beneath the breast, between the fourth and fifth ribs, in the same direction, being three fingers in depth, and two and a half fingers in breadth, with injury to the lungs, and much blood issued from the cavity, that was the cause of the decease: the whole of the aforesaid they have duly observed and inspected, and they deposed to the same on the aforesaid oath that had been administered to them, and in compliance with the duties of their profession, conscientiously, and to the best of their ability, they deposed their ages to be as follows; Don Antonio Paniza, fifty-seven years of age, and Don Luis Barraud, thirty-eight years of age; and they confirmed and ratified the foregoing, declaring that they would repeat the same at a future time if required. This their said deposition was read to them, and they declared to its being correctly written, the same strictly agreeing with what they had seen and had deposed; and they signed hereto, together with his honor the judge, which I certify.

YBARRARTE.

ANTONIO PANIZA.

H. BARRAUD.

In the presence of me,

FRANCISCO DE CASTRO,
Notary Public.

Examination face to face.]—In this port of Spain, in the windward island of Trinidad, on the fifteenth day of August in the year one thousand seven hundred and ninety, his honor Don Pedro de Ybarrarte judge of the first election of this island of Trinidad, under his majesty, assisted by his counsellor, and attended by sworn interpreters, also accompanied by me the notary, proceeded together to the royal hospital, where the dead body was deposited. And his honor then and there caused the negro *Francisco*, who had been imprisoned in the royal prison, to be brought and placed in view of the said dead body, when his honor reminded and admonish-

ed him to declare the truth relative to the deed that had been perpetrated; to all which he persisted denying any knowledge thereof, notwithstanding he had been *duly sworn*, and admonished, as aforesaid, to fear God, pay due regard to justice, and not to perjure himself; during which process and interval there had assembled a great concourse of people about the said hospital, when an *English negro woman*, named Sally, belonging to Donna Maria Jervis, came forward and declared to his honor the judge, *that she had seen the act or deed perpetrated*; in consequence whereof his honor, in presence of me the notary, administered to her the oath, on God our Lord, and on the Holy Cross, and thereon she promised to declare the truth of all she knew, and to all such questions that might be put to her. And on her being questioned with respect to what she knew of the matter, she deposed, that she, the deponent, with others of her companions were attending a decease at the house of Mr. Waldron, of a free black woman, named Anna Side, where the negro Francisco came in, whom she the deponent declares that she personally well knows, that he entered with a whip in his hand, and a knife in his belt, or girdle; that he stood still a short space of time; that all the black women were chanting prayers, agreeable to their custom, when the negro Francisco began to interrupt them, by making a noise, and disturbing the whole of them; in consequence whereof, the negro woman named Belchi, the particular acquaintance of the deceased, got up to turn Francisco out of the house; that he thereupon gave her a cut with the whip, on which they all of them rose up to protect the said black woman, that they then all of them went out, and when in the street, he then drew his knife, and began to fence or make lunges with it, one of which wounded the negro Sanson, belonging to Mr. White, on his left eye; that they all of them, being much frightened, retired back into the house again, and the negro Francisco remained out of doors, standing with his arms across; that about a little time after, she the deponent being in great fear of his again coming into the house, went out with intention of going home in company with the negro women, named Sui and Polly, and with three negro men named Scipio, Ham, and Andres; that she, the deponent, with Polly, went on foremost of the others, who followed them; that Scipio and Ham, had two stones in their hands, from fear of meeting with Francisco, the Spanish negro; that the deceased, Andres, and Sui, were the hindmost; that at this instant, Andres gave a scream, crying out,

"Oh God!", in a lamentable manner; that she the deponent turned round, and looked back, and saw that Francisco had set out a running, and that he went by the court yard of the house of Don Gaspiar de la Gardia; that they all of them saw him, and knew him; that she the deponent has not the least doubt but that Francisco was the person who gave the stab, and wounded Andres, of which wound he died. In consequence of the aforesaid deposition of this said black woman face to face of the said Francisco, and at same time in view of the dead body, his honor the judge again admonished and exhorted him not to deny the truth, relative to the crime committed, as deposed by said black woman; whereupon he said, that the same was untrue, and she the deponent understanding something of the Spanish language, spoke to him; she raised her hand to the face of the negro Francisco, and made the Sign of the cross, and said to him, "by this Holy Cross, and as I am a Christian, you are the person that murdered Andres;" she then stooped, and laid hold of his breeches, or trowsers, and said to him, "these are not those you had on last night, they were white ones" (these were blue striped), "neither is this the shirt;" and then laying hold of his hat she said, "this is the hat you had on last night, but the blue band is wanting." Whereupon, his honor the judge again exhorted and admonished Francisco, saying to him, "man do not perjure yourself, consider what this black woman says;" and his honor directed the officer to place the said Francisco close to the dead body; which being done, his honor the judge went close thereto likewise, and again spoke to him, saying, "do you know this man? and have you not murdered him? what motives had you for killing him?" and again bid him not perjure himself; said Francisco denied every thing, but was much agitated and trembled, he further said, that at half past nine o'clock of that same night, he had gone on board the Guarda Costa, or coasting vessel, which being heard by the deponent the negro woman, she immediately declared that it was a falsehood, and said, "remember it was night time when you came into the house, where there was a wake or watching a deceased person, and you touched me on the shoulder, and said, my pretty black woman, and that it was then past eleven o'clock at night, and I made answer to you" (this answer being an indecent one, the judge would not permit its being inserted), whereupon Francisco declared that he had never addressed, or courted her. His honor the judge, again admonished him not to perjure himself, exhorted him to fear God and to pay re-

gard to justice, said Francisco then replied, that the whole of the information given in by the deponent was false, and that he had never come or gone past the treasurer's office, on which the notary of this process, said to Francisco, "you know very well that the deed or crime was perpetrated beyond the treasurer's office;" to which said Francisco made no answer, thereupon his honor, the judge, questioned the deponent on the oath that had been administered to her, as aforesaid, at what time the murder of Andres was committed; whereto she replied, that it was between three and four o'clock in the morning; whereupon his honor, the judge, directed this process to be suspended for a while, at which said time the deponent, black woman, said, "there is the negro Sanson out in the street," and upon his being fetched in by the police officer, his honor, the judge, by means of an interpreter, administered to him an oath, on God our Lord, and on the Holy Cross; and thereon he promised to declare the truth of all that he knew and also to all questions that might be put to him, and on his being interrogated relative to the murder committed on the negro, Andres, he deposed, that on the preceding night, in consequence of the decease of Anna Side, a free black woman, he went to the house where her corpse lay, with the intention to accompany and attend the burial, with several other persons; that he was leaning upon a table, to rest himself after his work that he had been engaged in, that he saw the negro, Francisco, enter with a whip in his hand, and a knife in his belt, or girdle; that he took no further notice of him just then, but that at a short space of time afterwards, he heard a disturbance, and on his seeing him inflict a cut with the whip on Belchi, he endeavoured to allay the disturbance, and that every one that was there endeavoured to do the same; and that on his being on the outside of the street door, Francisco, whom he the deponent very well knew, drew his knife and began to fence, and make lunges with his said knife, one whereof wounded him the deponent above his eye, and that had he not withdrawn himself and retired into the house, he might have been killed in consequence whereof; and, from his not coming out again from the house, till the murder was committed, when he heard the outcry of the deceased negro, he did not then see Francisco, but that he saw the dead body of Andres, and he heard all his companions say, that it was Francisco that had committed the murder. Whereupon, his honour the judge suspended this process for a while, but to resume and continue the same in case of need;

and the aforesaid deposition was signed by his honor the judge, his counsellor, and by the interpreter, on the day aforesaid, but it was not signed by the deponents, nor prisoner, as they could not write, and the said negro woman, Sally, deposed to her being twenty-two years of age, a little more or less; and the said Sanson deposed to his being more than thirty years of age, and the prisoner was twenty-three or twenty-four years of age, as he appeared to be, all which I, the notary, do hereby certify.

YBARRARTE.

Licentiate SAVINON.

LUYS NIELL,

Sworn Interpreter,

DIEGO MIANY,

Interpreter.

In the presence of me,

FRANCISCO DE CASTRO.

Notary Public.

Act.]—Thus far the proceedings had gone on, when the relations of the deceased Andres made application, and verbally represented to his honor the judge, that they wished to bury him; whereupon permission for that purpose was given, and the notary of this process was directed to attend the same, and which he is to duly certify; and in pursuance hereof, his honor Don Pedro de Ybarrarte, the ordinary judge of the first election of this island of Trinidad, thus pronounced and decreed and signed hereto, together with his counsellor appointed by him, as aforesaid, in this Port of Spain, on the fifteenth day of the month of August, in the year one thousand seven hundred and ninety; which I certify

YBARRARTE.

SAVINON.

In the presence of me

FRANCISCO DE CASTRO.

Notary Public.

Process.]—Whereupon immediately afterwards, the mother of the deceased Andres being at the door of the tribunal, I notified to her personally the aforesaid decree, which she was duly made acquainted with; I certify the same

CASTRO. Notary.

Summons.]—I summoned the chief police officer, and notified to him, that he was to deliver the dead body as aforesaid; this I certify CASTRO. Notary.

Process.]—In continuation, I the notary, and the chief police officer, proceeded to the royal hospital, where the dead body of the deceased Andres was deposited, and the said chief police officer delivered the said dead body to the relations of said Andres, which I certify CASTRO. Notary.

It being suitable and conducive to the

right administration of justice, the officer of the court is hereby directed, to bring before his honour the judge, a negro woman named Magdalena, the property of Don Gaspar de la Guardia; and whereas, his honor thus pronounced and decreed, he signed hereto, together with his counsellor in this Port of Spain, on the fifteenth day of August in the year one thousand seven hundred and ninety.

YBARRARTE.
SAVINON.

In the presence of me

FRANCISCO DE CASTRO.
Notary Public.

On the same day, month, and year, and it being between the hours of one and two o'clock, as his honor the judge was coming away from the place where the shipping were moored, and on passing by the pier or quay, he met two men whose names were one of them Ramon, and the other Josef Ramon Jarias, and thereupon asked them, if they belonged to the Guarda Costa or coasting vessel, and they replied that they did; he then called Ramon apart and admonished him, on oath, to answer the truth, whether the black sailor Francisco a slave had slept on board; to which he said, he did not know, by reason of himself being ill the said preceding night; and Josef Ramon Jarias promised his honor the judge, that he would relate the truth relative to the matter in question; in consequence, he caused him to go before him in his tribunal, where an oath was administered to him, in the presence of the counsellor, and also of the notary, and of Dr. Antonio Alcazar, and Don Josef Troncoso as witnesses, and the aforesaid Josef Ramon Jarias accepted the said oath, on God our Lord and on the Holy Cross, and thereon he promised to relate the truth of all that he knew, and to whatever questions might be put to him; and on his being interrogated in manner as follows, he replied and deposed.

Firstly, on his being questioned relative to what station he had on board the Guarda Costa, or coasting vessel? He replied, that he was a mariner. On his being questioned what hour of the night preceding was his watch? He replied it was the hour from nine to ten o'clock.

On his being questioned, whether, at the hour of ten o'clock the negro Francisco, the slave of D. Manuel Sorzano, was on board or not? He replied, that he was not, and that when he the deponent gave up his watch at ten o'clock, he went to bed, and at that time Francisco had not come on board. On his being questioned relative to what orders

the clerk or purser of the Guarda Costa or coasting vessel, had given that night? He replied, that Senr. Acosta, who acts as such, had ordered the boat to be hauled up or hoisted in, and that the said boat should go no more ashore that night, which said order was given at nine o'clock.

On his being questioned, at what hour or time Francisco had gone on board? He replied, that as he had been asleep the whole of the night, he could only say, that this same morning, at the time that Francisco was fetched away bound or tied, that he heard it reported on board, that he had come on board at four o'clock in the morning; and he thus replied to this question.

And, on his being questioned relative to whom he had heard report or say as aforesaid? He replied, that it was a sailor by name Mateo, whose watch or turn commenced at four o'clock of the said morning, and who had said, that it was at that hour that Francisco had come on board; and he thus replied to this question.

And, on his being questioned, whether he knew the motive, or cause of the imprisonment of the said Francisco? He replied, that he had heard it generally reported in the place, that it was for a murder he had committed the preceding night, but that he, the deponent, had never seen any thing of the matter in question; that this is the whole he knows, and that he can depose in answer or relative to the questions that have been put to him, and is the truth on the oath that has been administered to him; and he ratifies and confirms his said deposition, and will repeat the same afresh in case of being required or necessary so to do: the aforesaid deposition was then read to him, and he deposed that the same was correctly written, and that he cannot add thereto or deduct therefrom; and that he is twenty-four years of age; he did not sign his said deposition as he could not write. His honor the judge signed this deposition, as also his counsellor, and the aforesaid witnesses, which I certify,

YBARRARTE.
SAVINON.

As a witness and at the request of the deponent,

ANTONIO ALCAZAR.

In the presence of me

FRANCISCO DE CASTRO.
Notary Public.

Deposition of Ignacio.] — Soon or immediately afterwards, there having casually appeared at the entrance of the court of his honor the judge, a negro named Ignacio, who was also

serving on board the Guarda Costa, or coasting vessel; whereupon his honor the judge caused him to be sworn, and accordingly an oath was administered to him in the presence of a counsellor, and also of me, and in the presence of the aforesaid witnesses Alcazar and Troncozo, on God our Lord and on the Holy Cross, and thereon he promised to declare the truth of all that he knew, and to whatever he might be questioned on; and thereupon the following interrogatories having been severally put to him, he replied thereto as follows: he was first interrogated in what situation he served on board the Guarda Costa or coasting vessel? he answered, that he was an assistant to the cook and did other ship's duty, such as pumping, rowing, &c. whenever required so to do; he thus replied to this interrogatory.

On his being questioned, whether he personally knew the negro Francisco the slave to Don Manuel Sorzano? He replied hereto, that he did know him. On his being questioned at what hour of the night he the deponent had retired to rest? He replied, that he went to bed after he had got ready and served the supper for the people on board, but that he still continued awake for the purpose of giving Francisco his supper when he should come on board, and which he had put by for him; that he got up several times during the night, in consequence of the said supper that he had reserved for Francisco until it became very late, or about two o'clock, and at that time Francisco was not yet come on board; and he thus replied to this question. On his being questioned, whether he knew at what hour said Francisco had gone on board? He replied, that he could not tell the exact hour, but that it was about day break when Francisco went on board, and descended into the hold, at the same time telling a sailor belonging to the same Guarda Costa or coasting vessel, whose name is Vicente, that he had killed a person on shore, and at the same time he pulled out a Flemish or Dutch knife, as it appeared to him, about the value of two rials, and that it was all stained with blood, and that the said negro Francisco the slave of Don Manuel Sorzano, then threw the knife overboard into the sea, that in like manner his shirt appeared to him to be also stained with blood, and that when in custody as they were tying him, the whole of the crew that were on board, said, that it was by reason of his having committed a murder on shore. That the foregoing is all he knows, and is the whole truth, on the oath that has been administered to him; and he confirms

and ratifies the same, and in case of need he will repeat the same afresh. This, his aforesaid deposition, was then read over to him, and he declared that it was correctly written and that he cannot either add thereto or diminish, the same being strictly conformable in every respect to what he has deposed: that he is twenty-two years of age, a little more or less; he did not sign hereto, as he could not write, but his honor the said judge signed hereto, together with his counsellor, and also the witnesses, all which I the notary certify

YBARRARTE.

Licentiate SAVINON.

As a witness and at the request of the deponent,

ANTONIO ALCAZAR.

In the presence of me

FRANCISCO DE CASTRO.

Legal Proceeding.]—I, the undersigned notary, do hereby certify, that the dead body was buried at about half past four o'clock in the afternoon of this day, being the said fifteenth, and that I was an eye-witness thereof. CASTRO.

Deposition.]—In this Port of Spain, on the sixteenth day of the month of August, in the year one thousand seven hundred and ninety, his honor the said judge caused Madalena, a black woman, the slave of Don Gaspar de la Guardia, to be brought before him, to whom, his honor the said judge, with the assistance of his aforesaid counsellor, and in the presence of me the notary, administered the oath to her, and which she voluntarily accepted, on God our Lord, and on the Holy Cross; and thereon she promised to relate the truth of all she knew, and to whatever she might be questioned on; and thereupon she was interrogated relative to the following matters. Firstly, she was questioned, whether she personally knew the negro Francisco, the slave to Don Manuel Sorzano, and also whether she knew the deceased slave Andres belonging to Mr. Josef? she replied hereto, that she did not know the latter, but was very intimately acquainted with the former, by reason that a marriage had been expected to take place between them. On her being questioned, whether she was at the ceremony of the waking of the deceased Anna Side, the free black woman, at the time when Francisco went into that house? she replied, that she was not, but that she was at home and had retired to rest, when a little after ten o'clock at night, as she imagines, Francisco came and called to her, saying to her, Ah! woman, in this neighbourhood or not far off, there is the ceremony of a waking, let us go and see it; whereupon she drest

herself and they went both together to the house where the deceased Anna Side lay; that Francisco had a whip in his hand and a knife in his belt, as appeared of about the value of two rials; that when they got into the house she went and sat down with the women, and Francisco kept coming in and going out, that the people there were chaunting their rosary, which when they had concluded, the person who recited began to chaunt the Commandments of the Law of God to the deceased, whereupon Francisco said that it was not usual to chaunt them over dead people; to which the person who had recited said, what do you come here and pretend to teach me to chaunt, or what is proper to be chaunted? To which Francisco told him, that he, the reciter, knew nothing about it; that they both of them then got to high words, whereupon the rest of the people that were there rose up to pacify and put an end to the disturbance, and a black woman, whose name she is ignorant of, but knows that she was an acquaintance of the deceased, laid hold of Francisco with intention of pushing him out of the house; that Francisco then gave the said black woman a cut with his whip, that all the people that were at the said ceremony of the waking, then got up in confusion, and went out into the street, where she, the deponent, saw Francisco in a furious temper; that she then ran to some distance, and then stopt to observe what passed, that he soon after separated from the concourse of people that were there to some short distance, saying if any one had a mind to fight with him, they should follow him the road to St. Anns; that said Francisco then came close to the deponent and took off her hat, saying to her go home to your own house, and that if he caught her out any where again he would punish her; that accordingly being much afraid of him she went and fastened herself in at home, that she did not attempt to pacify him by reason of her being afraid of his knife, that some time afterwards, but that she does not know at what hour it was, because at her master's house they cannot hear the clock, but she imagines that it was past twelve o'clock at night, she heard some very lamentable and dismal outcries, that Francisco came to the door of the room where the deponent lived, when he asked her what outcries they were; and that she answered him that he ought to know better than her as he was out in the street, that she then asked him for her hat which he accordingly gave her, and said farewell, I am now going on board; that at that moment her companion Andrea came home, who lives in the same house with

her, she, Andrea, being a slave of the same master, and said Andrea told her, that said Francisco had killed a man, whereupon she, the deponent, ran out into the street, and there met with Francisco stark naked with the knife in his hand; that she did not approach very near to him, being very much afraid of the knife, and that she spoke to him, and said, Francisco have you killed any one? and he replied, that he had not then; she, the deponent, asked him what had become of his clothes, or dress; and thereto Francisco answered, that they laid just there on some planks, but that she, the deponent, did not see any thing lying thereabouts; that the said Francisco then told her to go home, and that he was going on board; on which she replied, may the Holy Virgin preserve me. She thus replied to the aforesaid question, and on her being questioned at what hour, she, the deponent, had finally retired from the street, she said it was near day-break, and that she supposed it to be from three to four o'clock, for by reason of her having immediately afterwards gone to the city of St. Josef, and from thence to proceed to the plantation of her master, it became morning before she got to the cocoa plantation of Aricagua. She thus replied to this question. On her being questioned what Spaniards and French people were at the house where the waking was celebrated, she answered, that she did not know the names of the persons there, except of one woman, named Sally, the slave of Mr. Jarvis, and that of the Spanish women she only knew one, called Pata de Jamon, or Pig's-foot; she thus replied to this question.

On her being questioned relative to the sort of linen dress the said Francisco had on that night, and at the latter part of her interview with him, she replied that he had white wide linen trowsers on, a shirt of the same and a black hat. She thus replied to this question. On her being interrogated whether she ever knew Francisco to be of a quarrelsome disposition, or guilty of creating disturbances, she said she did not know him to be such, but that she had had some differences with him, which she attributes their having been occasioned by her intentions of getting married. That the aforesaid is all she knows, and that the whole thereof is the truth on the oath that has been administered unto her; and she confirms and ratifies the same, and in case of need will repeat it afresh. This aforesaid deposition was then read over to her, and she declared that the same was truly and correctly written; that she cannot add thereto or diminish therefrom, and is strictly conformable in

every respect to what she has deposed ; that she is from twenty-five to twenty-six years of age, she did not sign hereto as she said she could not write. His honor the said judge signed hereto together with his counsellor, which I hereby certify,

YBARRARTE.

Licentiate SAVINON.

In the presence of me

FRANCISCO DE CASTRO.
Notary Public.

Deposition of *Ramon Roca*.]—In the Port of Spain, on the nineteenth day of the month of August, in the year one thousand seven hundred and ninety, his honor the judge of the first election ordered *Ramon Roca* to appear before him in his tribunal, who was a sailor belonging to the *Guarda Costa* or coasting vessel of this port, to whom his honor the judge, in the presence of his counsellor, and of me the notary, administered the oath in due form, on God our Lord and on the Sign of the Cross, and thereon he promised to relate the truth of all whatever he might know, and to all such questions as might be put to him, relative to the particulars of the matter that has been the cause of the institution of this process ; and accordingly the following questions were then put to him : on his being questioned, where he was and where he had past the night of the fourteenth day of the present month, he deposed that by reason of his being a sailor belonging to the *Guarda Costa* or coasting vessel, he had gone on board thereof at nine o'clock at night of the said Saturday, he having been ashore ; and he thus replied to this item. And on his being questioned whether he personally knew the negro *Francisco* the slave, the property of *Don Manuel Sorzano*, at what time said *Francisco* had gone on board, in what condition he was in at said time, and whether he knew any thing of a certain murder that had been committed by him ; he deposed that on the aforesaid Saturday when he was going on board, he met the said *Francisco* in the street, whom he well knows, by reason of their both belonging to the *Guarda Costa* or coasting vessel, and that he, the deponent, asked said *Francisco* whether he was going on board, who replied that he was not ; that he, the deponent, went on board at nine o'clock as aforesaid, that the watch was committed to him at twelve o'clock, and was relieved therefrom at one o'clock in the morning ; that previous to the said hour said *Francisco* had not come on board, that between four and five o'clock of the said Sunday morning, being the fifteenth of the present month, said

Francisco came on board, that he, the deponent, having been to mass, he immediately returned on board, and the deponent, together with another sailor, whose name is *Josef Antonio Castro*, went down into the hold, and there found *Francisco* in a thoughtful or melancholy state, with a knife by his side sheathed ; that the said *Francisco* appeared to be half asleep, or inclined thereto ; that immediately on their descent said *Francisco* spoke to them, and enquired what news there was on shore ; that he, the deponent, together with the other sailor, made for answer, that it was generally reported, that he, *Francisco*, had committed a murder the preceding night on a negro ; whereupon said *Francisco* replied, that it was a falsehood, and then requested of them both, saying, you are my friends, say both of you that I slept on board ; and said *Francisco* remained a short time in suspense, and then said, that he had no fear but of his master and of being hanged, and said *Francisco* having a handkerchief in his hand that was much stained, he with great inquietude and confusion struck the handkerchief with his hand, saying this is what will be my ruin, and requested of him, the deponent, to wash it for him, which he, the deponent refused to do ; and together with his aforesaid companion, they proposed throwing the knife overboard, which was done by a sailor, whose name is *Josef Matheo Concepcion* ; that a short time afterwards the said *Francisco* was taken into custody and conveyed ashore, and that the said *Francisco* was continually flourishing and making feigned blows with his knife, and that he is of a bad disposition : and that the aforesaid is all he knows and is all that he can depose in answer to the questions that have been put to him, and that the whole of his aforesaid deposition is the truth on the oath that has been administered unto him, and he confirms and ratifies the same, and in case of need will repeat it afresh ; and that he is twenty-five years of age : his aforesaid deposition was then read over to him, and he declared that the same was correctly written, and that he cannot either add thereto or diminish therefrom, and he signed hereto together with his honor the judge, which I certify.

YBARRARTE.

Licentiate SAVINON.

RAMON ROCA.

In the presence of me

FRANCISCO DE CASTRO.
Notary Public.

On the same day month and year herein before mentioned, his honor the said judge of the first election ordered

the black woman Sai, the slave of madam Hamil, to be brought before him, said madam Hamil residing in this district, to whom, by means of an interpreter, and there also being present his counsellor, and in the presence of me the notary, his honor the said judge administered the oath in due form, on God our Lord and on the Sign of the Cross, and thereon she promised to relate the truth of all whatever she might know, and to all whatever questions might be put to her, relative to the particulars of the matter that has been the cause of the institution of this process; and thereupon she declared, that she, the deponent, on Saturday night the fourteenth of the present month, was at a house, but that she does not know the name of the street in which said house is situate, and where sundry persons were celebrating the waking of a deceased person named Anna Side, that she personally knows the negro Francisco, the property of his honor the treasurer, that said Francisco came into the said house where they were celebrating the waking between eleven and twelve o'clock, according to the recollection of her, the deponent, but that she cannot positively state the exact time, that the said Francisco came in with a whip in his hand, but that she did not see any knife in his girdle or belt, that there came in before Francisco a negro woman, whose name is Madalena, and is the slave of Don Gaspar de la Guardia. That a Dutch negro being at that time chaunting the rosary over the dead corpse, together with several other persons, there ensued some high words between him and Francisco, but which she did not understand as she, the deponent, does not know the Spanish language, but that she was informed by others, that the said high words were occasioned by the negro Francisco telling him, that he was ignorant of the rosary, and that he did not know how to chaunt it; that at that instant, the negro woman Velti, the acquaintance of the deceased, laid hold of Francisco to push him out of the house, in consequence whereof the said Francisco gave the said Velti a cut with his whip; that she did not see said Francisco flourish or fence with his knife, because she remained in the inside of the house, but that she, the deponent, knew that he had done so, by reason of the negro Sanson having come in with a wound near his eye, and which was then bleeding, and who told them, that said Francisco had wounded him with a knife; that towards day-break, but does not know at what o'clock, they all of them went out with intent to go home, the negro Scipion with a lighted candle

in his hand, another negro named Juan and the negro Andres, together with her, the deponent, and Saly, and Paly; that she, the deponent, with Andres were behind all the rest, and having got two or three steps before him, she, the deponent, heard Andres cry out, whereupon she turned round, she saw the negro Francisco at about four or five yards distance from Andres, in the act of running away, that at the moment the said Francisco was running away, Andres fell to the ground, and whereas, in consequence of there being no one else behind than them two, viz. she, the deponent, and the negro Andres, as herein before deposed by her, and by reason of the said Francisco going away at the moment the stab was inflicted, she firmly believes that it was Francisco who committed the said murder. That thereupon, she, the deponent, began to cry out, calling back those persons who had gone on before, who all of them came back, and who all came close to Andres, who was found to be already dead, with a severe stab on the left side of his breast, from which a deal of blood had issued; after which they all of them went home, and she further deposed, that she has heard it said that the body was taken charge of by justice, and that the aforesaid is all she knows and that she can depose relative to the matter in question, and to the interrogatories that have been proposed to her, and that the same is the truth on the oath that has been administered to her, as aforesaid, and she confirms and ratifies it, and in case of need will repeat the same afresh; that she is between twenty-four and twenty-five years of age, a little more or less; her aforesaid deposition was then read over to her, and she deposed, that the same was correctly written, that she cannot either add thereto or diminish therefrom; she did not sign hereto as she could not write, but his honor the said judge signed hereto, together with his counsellor and the interpreter which I certify.

YBARRARTE.

Licentiate SAVINON.

LEWIS NIELL,

Public Interpreter.

In the presence of me

FRANCISCO DE CASTRO.
Notary Public.

Deposition of *Josef Antonio Castro*.]—

Immediately afterwards, his honor, the said judge, ordered Josef Antonio Castro, a sailor, belonging to the Guarda Costa, or coasting-vessel, to be brought before him, to whom his honor (in the presence of me, the notary, and his counsellor also being present), administered the

oath in due form, on God our Lord, and on the Sign of the Cross, and thereon he promised to relate the truth of all whatever he might know, and to all questions that might be put to him, and on his being interrogated with respect to the particulars of the matter, that has been the cause of the institution of this process, and the other circumstances thereof, he deposed hereto, that, on Saturday, the fourteenth day of the present month, he retired to rest on board the *Guarda Costa*, or coasting-vessel, to which, as a sailor, he belongs; and that, at two o'clock in the morning, of the day following, it became his turn to watch till three o'clock, and that, at that period of time, Francisco had not come on board; that at the expiration of his watch, he again retired to rest, and that no other person was set to watch, as those that were on board had all of them taken their turn, and that the remainder of the crew were sick in the hospital. That early in the morning, he the deponent, together with Ramon Roca, also a sailor, belonging to the said *Guarda Costa*, or coasting-vessel, went ashore to mass, that immediately on getting ashore he heard it reported, that said Francisco had committed a murder, and that the dead body was in the hospital, whereupon they both of them went to see it. That after they had been at mass, they again went on board, and Ramon began to say, in the presence of Francisco, what a shocking affair had happened ashore; in consequence of this, Francisco called him, the deponent and Ramon down into the hold and said, Francisco told them, with great sadness, that it had been his intention to have got banns published in church, of his being about to contract matrimony, but from this disaster, how unfortunate a turn; he remained some time in suspense, and then said that his only fear was of his master, and of being hanged; that said Francisco then delivered into their hands a handkerchief, that was stained, and as he was in the act of delivering it, he struck the said handkerchief with his hand, saying, this is what will be my destruction. I will now see whether you are my friends; I earnestly beg of you, in the strongest manner, that if you should be called upon, that you will say that I slept on board; and said Francisco then requested of him, the deponent, as also of the others that were present, to wash the said handkerchief for him, but not one of them would do it; he further deposed that Matheo, a sailor, also belonging to the said *Guarda Costa*, or coasting-vessel, took the knife that Francisco had, and threw it down in the hold; under these circumstances, he the deponent,

declared, that he did not know who took up the knife again out of the hold; that both himself and Ramon had had it in their hands, and that it was stained or discoloured all over, in the same manner as was the handkerchief; that Francisco, on Saturday, when he went ashore, had on a shirt, and breeches or trowsers of white linen; and that when he was seen on board in the morning, he had other things on; that the said Francisco was very fond of sharpening and grinding his knife, and that when on board he was constantly practising and fencing with his knife, shewing the method or manner of inflicting a good stab. He then deposed, that the aforesaid is all he knows, and is all that he can say, in reply to the questions that have been put to him; and that the whole thereof is the truth, on the oath that has been administered to him; and he confirms and ratifies the same, and, in case of need, will repeat it afresh; that he is twenty-four years of age; his aforesaid deposition was then read over to him, and he declared that the same was correctly written, that he cannot add thereto, or diminish therefrom; he did not sign hereto, as he said he could not write. His honor, the said judge, signed hereto, together with his counsellor, which I certify.

YBARRARTE.

Licentiate SAVINON.

In the presence of me,

FRANCISCO DE CASTRO.

[Deposition of the mulatta *Poly*.]—In the port of Spain, on the same day, month, and year, hercinbeforementioned, his honor, the said judge, ordered to be brought before him the mulatta *Poly*, the slave of madame Phipps, residing in this district, to whom his honor, the judge, by means of the interpreters, his counsellor being also present, and in the presence of me, the notary, administered the oath, in due form, on God our Lord, and on the Sign of the Cross; and thereon, she promised to relate the truth of all whatever she might know, and to all questions that might be put to her, and on her being interrogated with respect to the particulars of the matter that has been the cause of the institution of this process, and relative to the other circumstances thereof, she deposed thereto, that on the night of Saturday, the fourteenth of the present month, she, the deponent, was at a house, but that she does not know the name of the street, further than that it is in the way or road to St. Ann's, and that several were there celebrating the waking of a free black woman, named Anna Side, that towards a late hour in the evening, at about eleven o'clock, the negro Fran-

cisco, the slave of Don Manuel Sorzano, came there, in company with a black woman. That Francisco had a whip in his hand, but she did not see him with any knife, that all of them were chanting the rosary, which was first recited to them by a Dutch negro, whose name she does not know, and that Francisco and him had words relative to the chanting, but that she did not understand what was said by them to each other, from her not knowing the Spanish language, but that her companions told her it was occasioned by the chanting. She further deposed, that a black woman named Belchy, an acquaintance of the deceased negro woman, laid hold of Francisco, to push him out of the house; whereupon Francisco gave her a cut with his whip; that by reason of her having remained in the inside of the house, she did not see whether Francisco drew any knife in the street, but that the negro, Sanson, came into the house, with a wound near one of his eyes, bleeding, who said that Francisco had wounded him with a knife; that early in the morning, she, the deponent, together with her companions, Saly, Suy, and with the negroes Stan, Sipio, and Andres, went away together; that the latter having staid behind with Suy, she heard Andres make a great outcry, crying out, oh Lord! she, the deponent, then turned round, and saw Francisco running away, towards the court-yard of Don Gaspar de la Guardia, that they then went to Andres, and when they all of them had got near him, they found that said Andres was already dead with a severe wound in his heart having bled very profusely on the ground, and that they all of them immediately retired to their respective homes, and she declared that the aforesaid is all she knows, and is the whole that she can depose, in reply to the questions that have been put to her, and that the whole thereof is truth, on the oath that has been administered to her, and she confirms and ratifies the same, and in case of need, she will repeat it afresh; that she is seventeen years of age; the aforesaid deposition was then read over to her, and she declared that the same was correctly written; that she cannot either add hereto, neither can she diminish, she did not sign hereto, as she said she could not write, but his honor, the said judge, signed hereto, together with his counsellor, and the interpreters, which I certify.

YBARRARTE.

Licentiate, SAVINON.

LUIS NIELL,

Public interpreter.

DIEGO MEANY,

Jun. Interpreter.

In the presence of me,

FRANCISCO DE CASTRO.

In the port of Spain, in the same day, month and year, as herein before mentioned, for the better ascertaining the truth, with respect to the act that has given rise to this process, his honor, the said judge, ordered to be brought before him, Ham a negro slave, belonging to Don William White, residing in this district, to whom his honor, the said judge, in the presence of his counsellor, also of the interpreters, and of me the notary, administered the oath, in due form, on God our Lord, and on the Sign of the Cross; and thereon, he promised to relate the truth of all whatever he might know, in reply to all questions that might be put to him; and on his being interrogated with respect to the matter and cause of the institution of this process, and other circumstances thereof, he deposed, that on Saturday last past, at about eleven o'clock at night, he went to a house, but that he does not know the name of the street, in this city, where several persons were celebrating the waking of a free black woman, named Anna Side, whereat he saw the negro Francisco, the slave of Don Manuel Sorzano, with a whip in his hand, but he did not observe whether he had any knife or not in his girdle, or belt. That a Dutch black was chanting the rosary, together with his companions, and had words with the negro Francisco, but that he, the deponent, did not understand them, as not being acquainted with the Spanish language; that he, the deponent, observed the negro woman Berty, the acquaintance of the deceased, Anna Side, lay hold of Francisco, to push him out of the house, in consequence whereof, said Francisco, gave to Berty a cut with his whip; that some of the parties then went out, and he the deponent, with others remained within doors, that he the deponent heard several of them say, that said Francisco, had given the negro Sanson a wound with a knife over his eye; that at two o'clock in the morning following, he, the deponent, went out of the house where they had been celebrating the waking, in company with Saly, Paly, Sui, Sipion and Andres, that Andres and Sui remained behind, that soon afterwards he heard an outcry, and Sui calling them back, that he, the deponent, with the rest returned back, when they found Andres lying stretched on the ground, with a severe stab in his breast, already dead; that Sui told them that it was Francisco that had killed him. He further deposed, that he does not know whether any quarrel had existed between them. That the aforesaid is all that he knows, and is the whole that he can reply to the questions that have been put to him, and that the same is the truth.

on the oath that has been administered to him, and he confirms, and ratifies the same, and in case of need will repeat it afresh; that he is twenty-eight years of age. His aforesaid deposition was then read over to him, and he declared that the same was correctly written, that he cannot either add thereto, or diminish; he did not sign hereto, as he said that he could not write, but his honor, the said judge, signed hereto, together with his counsellor, and the interpreters, which I certify.

YBARRARTE.

Licentiate, SAVINON.

LEWIS NIELL,
Public Interpreter.

DIEGO MEANY,
Jun. Interpreter.

In the presence of me.

FRANCISCO DE CASTRO.

[Deposition of the negro *Sipion*.]—Immediately afterwards, for the purposes as described in the deposition aforesaid, his honor, the said judge, on the same day, ordered to be brought before him, *Sipion* a negro slave belonging to madam Phipps, residing in this city, to whom, in the presence of his counsellor, and by means of the interpreters, and in the presence of me, the notary, his honor administered an oath, in due form, on God our Lord, and on the Sign of the Cross; and thereon, he promised to relate the truth of all whatever he might know, in answer to the questions that might be put to him; and accordingly a variety of questions were put to him, agreeable to the tenor of the matter, or cause, of the institution of this process, and the other circumstances thereof; and thereto, he deposed, that on the night of Saturday last past, he the deponent, went to a house in this city, but does not know the name of the street said house is situate in, where several persons were celebrating the waking of a negro woman, named *Anna Side*; which house stands in the way to St. Ann's, in which said house, there was a negro named *Francisco*, the slave belonging to his honor the treasurer of this island, with a whip in his hand, but he did not see whether he had any knife, or not, that he perceived they were chanting the rosary in the Spanish language, and particularly one who appeared to him to be a Dutch negro; that the chanting having ceased, he observed, that *Francisco* had got in a passion, and that he was quarrelling with the one who had recited, or given out the words; that he, the deponent, did not know the cause of the quarrel, from his not understanding the Spanish language, but that he afterwards heard it said, that

Francisco had opposed the chanting, but for what reason he knew not; that they all of them were in a state of disturbance, and the negro woman *Berty* went up to *Francisco* and laid hold of him, pushing him towards the street, that in consequence of this, *Francisco* lifted up his whip, and gave the said negro woman, who was an acquaintance of the deceased, a cut with his said whip; that part of the people that were there, went out into the street, and others remained in the house, as did he, this deponent; that he did not see said *Francisco* draw, or fight with a knife, in the street, but that soon afterwards there came in the negro *Sanson* with a wound over his left eye, bleeding, who said, that the negro *Francisco* had wounded him with a knife; that about two o'clock in the morning, of the day following, they all went out of the house where they had been celebrating the waking, to go to their respective homes; he, the deponent, with *Saly*, *Paly*, *Sui* and *Andres*, were in company together, going towards their own homes; that those who were going on before with him, the deponent, heard outcries, and he heard the said *Sui* calling out to them; that they immediately returned back to the place where the said *Sui* was calling out to them, when they found *Andres* lying on the ground, with his mouth upwards, already dead, with a severe wound in the left side of his said breast; that the aforesaid *Sui* told him, the deponent, and also the rest that were there present, that *Francisco* had killed *Andres*; that he, the deponent, is ignorant whether any quarrel had ever happened between *Francisco* and *Andres*, and that the aforesaid is all that he knows, and that he can depose in reply to the questions that have been put to him, and is the whole truth on the oath that has been administered unto him, and he confirms and ratifies the same, and in case of need will repeat it afresh, and that he is twenty-four years of age. His aforesaid deposition was then read over to him, and he deposed, that the same was correctly written, that he cannot either add thereto, or diminish. He did not sign hereto, as he said he could not write, but his honor, the said judge, signed hereto, together with his counsellor, and also the interpreters, which I certify.

YBARRARTE.

Licentiate, SAVINON,

LEWIS NIELL,
Public Interpreter.

DIEGO MEANY,
Jun. Interpreter.

In the presence of me.

FRANCISCO DE CASTRO,
Notary Public.

[Deposition of *Vicente Ferrer*.] In the Port of Spain, in this island of Trinidad, on the twentieth day of August, in the year one thousand seven hundred and ninety: His honor, the judge of the first election, ordered to be brought before him, Vicente Ferrer a sailor, belonging to the Guarda Costa or coasting vessel, of this port, and to whom, the said judge, his aforesaid counsellor being there present, and in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Cross; and thereon he promised to relate the truth of all whatever he might know, in reply to the questions, that might be put to him; and accordingly, on his being interrogated relative to the matter or cause of the institution of this process, and the other circumstances thereof, he promised to reply to the following interrogatories:

1st. On him, the deponent, being interrogated, where he was on the said Saturday night, and with whom he had conversed and been in company, he replied, that he had remained on board the said Guarda Costa or coasting vessel, the whole of that night; he thus replied to this question; on his being questioned, whether he knew the negro Francisco, the slave belonging to Don Manuel Sorzano, he deposed, that he did know him, from his being a shipmate of him, the deponent; he thus replied to this question; on his being questioned whether the said Francisco came on board the said Guarda Costa or coasting vessel, during the whole course of the night of said Saturday, he deposed, that at twelve o'clock, of that said night, he had not then come on board, neither had he at three o'clock in the morning of the following day, as he the deponent had laid awake till the said period of time; that very early in the morning about day break, he, the deponent, saw Francisco on deck with different clothes or dress on, than what he had gone ashore in; he thus replied to this question; on his being questioned, with respect to the actions, or any words that were used or uttered by Francisco, on that same morning, or what else he might know, whether the said Francisco, had been the aggressor and perpetrator of the murder of a certain negro, that was committed on the said night of Saturday or early in the following morning; he deposed, that he, the deponent, being on board the said Guarda Costa or coasting vessel, in the morning, breakfasting on some soup, Francisco saw the king's boat, whereupon the said Francisco, began to tremble in a very violent manner, and said to him, the deponent, "Oh! they are coming for me!" whereupon he, the deponent,

insinuated designedly, that the said Francisco had been the person who had been guilty of the crime; but, that he might not continue to be so agitated, he, the deponent, to encourage him said, "don't be alarmed, the boat is not coming here, it is going on board a sloop, to search her." He, the deponent, also observed, that Francisco let fall the spoon out of his hand with which he was eating his soup, into his plate or dish. That the king's boat having come on board, and fastened along side, Francisco rose up, and went down into the hold, to fetch his clothes; that accordingly the chief officer, Castillo, having come on board, in the boat, took Francisco ashore with him; that one of the deponent's shipmates went down into the hold, and in the place where Francisco had been, he found or picked up his knife, and having brought it up on deck, they all of them proposed the heaving it overboard; saying "this knife, or this devil, let it be thrown away;" that the said knife was full of stains; and this deponent declared that this is all he knows, and is all that he can say, in reply to the questions that have been put to him, and is the whole truth, on the oath that has been administered to him; and he ratifies, and confirms the same, and in case of need will repeat the same afresh: that he is twenty-four years of age, and he signed hereto, together with his honor the said judge, and his counsellor; and on his aforesaid deposition being read over to him, he declared the same to be correctly written, which I certify.

YBARRARTE.

Licentiate SAVINON.

VICENTE FERRER.

In the presence of me

FRANC. DE CASTRO, Notary Public.

[Deposition of *Juan Bentancurt*.] Immediately afterwards, for the purpose of discovering and ascertaining the truth of the matter on which these proceedings are carried on: His honor, the said judge of the first election, ordered to be brought before him, Juan Bentancurt, a sailor belonging to the Guarda Costa or coasting vessel, to whom, in the presence of his counsellor and of me, the notary, his honor administered the oath in due form, on God our Lord and on the Sign of the Cross; and thereon he promised to relate the truth of all whatever he might know, and to all whatever questions might be put to him; and on his being interrogated with respect to the matter or cause of the institution of this process, and with respect to the other circumstances thereof—He deposed, that he, the deponent, was on board the Guarda Costa or coasting vessel, on

the night of last Saturday; that at nine o'clock he retired to rest, and did not get up till the morning; that when he went to bed, the negro Francisco, the slave of Don Manuel Sorzano, his shipmate on board the said Guarda Costa or coasting vessel, was not seen on board by him, neither did he see him till the hour of seven o'clock, of Sunday morning; and that he does not know whether the said Francisco slept on board or on shore, and that he, the deponent, has heard it reported, that Francisco had killed a man, which murder was committed a few days ago; and notwithstanding several other questions were put to this deponent, he deposed, that he did not know any thing more and that his said deposition is all that he can say, in reply to the questions, that have been put to him, relative to this matter, and that the same is truth, on the oath that has been administered unto him; and he confirms and ratifies the same, and in case of need will repeat it afresh: that he is twenty-two years of age, and his aforesaid deposition was then read over to him, and he deposed that the same was correctly written, and that he cannot add thereto or diminish, and he signed hereto, together with his honor the said judge, and his counsellor, which I certify.

YBARRARTE.

Licentiate SAVINON.

JUAN BENTANCURT.

In the presence of me
FRANCISCO DE CASTRO,
Notary Public.

[Deposition of the Negro Woman *Andrea*.] In the Port of Spain, in this windward island of Trinidad, on the twenty first day of the month of August, in the year one thousand seven hundred and ninety: his honor, the judge of the first election, ordered to be brought before him the negro woman, named Andrea, the slave of Don Gaspar de la Guardia, to whom his honor, the said judge, by means of the interpreters (there being also present his counsellor, and in the presence of me, the notary), administered the oath in due form, on God our Lord, and on the Sign of the Cross; and thereon she promised to relate the truth of all whatever she might know, and to the questions that might be put to her; and on her being interrogated with respect to the matter or cause of the institution of this process, and with respect to the other circumstances thereof, she, the deponent, to the sundry questions that were proposed to her, deposed as follows: that with respect to what is said in her summons, and the deposition wherein her name is mentioned, the contents thereof are true;

her fellow-servant Madalena, having spoke the said words to her, as expressed therein, that the way how she, deponent, came to know that the negro Francisco, the slave of his honor, the treasurer of this port, had committed a murder was, from her, the deponent, being a-bed in her own room, in her master's house, that is to say, in the hall, she heard outcries in the street, such as "Oh Lord!" "Oh God!" and the black woman Sui kept saying, "They have killed him, Andres is dead!" that she, the deponent, got up, together with Madalena, and went out into the court-yard, where she heard the negro Francisco say, "Here, here, Magdalena, come here, my girl;" that accordingly, she went towards where Francisco stood, with Madalena, behind the palisades; then she, the deponent, went out of the door of the court-yard to see what had happened. That there, in the middle of the street, near her own house, she found the negro Andres, whom she very well knew, lying on the ground with his face upwards, with a deal of blood that had issued from him, and dead. That with respect to her having heard the black women Sui and Saly say, that it was the negro Francisco, the slave of his honor the treasurer, that had killed Andrés, that this report she, the deponent, heard solely from the mouth of Saly, the slave of madam Jervis, and did not hear Sui report it. That immediately afterwards, she, the deponent, took to her heels, and went home; and she deposed, that she knew nothing more. And this her aforesaid deposition is all that she knows, and is all that she can depose in answer to the questions that have been put to her, and is the whole truth, on the oath that has been administered unto her, and she confirms and ratifies the same, and in case of need will repeat it afresh: that she is between thirty-four and thirty-five years of age; this her said deposition was then read over to her, and she deposed, that the same was correctly written, that she cannot either add thereto or diminish: she did not sign hereto, as she could not write. His honor, the said judge, signed hereto, together with his counsellor, and the interpreters, which I certify.

YBARRARTE.

Licentiate SAVINON.

LEWIS NIELL, Interpreter.

DIEGO MEANY, jun. Interpreter.

In the presence of me
FRANCISCO DE CASTRO,
Notary Public.

Deposition of *Mateo* a sailor.]—On the aforesaid day month and year, for the

due examination and ascertaining the truth of the facts and crime, whereon this criminal cause is founded, his honor, the said judge of the first election, caused to be brought before him Mateo, a sailor belonging to the Guarda Costa or coasting vessel of this port, to whom his honor the judge, in the presence of me the notary, and his counsellor likewise being present, administered the oath in due form, on God our Lord, and on the Sign of the Cross, and thereon he promised to relate the truth of all whatever he might know, and to the questions that might be put to him; and on his being interrogated with respect to the matter and cause of the institution of this process, he deposed, that he, the deponent, had remained on board the said Guarda Costa or coasting vessel during the night of Saturday, the fourteenth of the present month, and that it was his turn to watch from one o'clock till two o'clock in the morning of the fifteenth of the present month; that he did not see Francisco, the slave of Don Manuel Sorzano, come on board previous to that time, and that he does not know whether he was on board or not, but that the whole of the crew had said that Francisco had been on shore till four o'clock in the morning; that at the expiration of his watch he went to bed till morning, and until it was quite light, that he, the deponent, then went to the fore-castle and then saw Francisco stretched out below asleep and quite naked, that he, the deponent, called to him and bid him dress himself; that Francisco then got up and put on a short waistcoat, although there lay by his side the same things that he had gone ashore in, which were tied up in a handkerchief all over dirt; that a little time afterwards the cook gave to Francisco a plate of soup, when he, the deponent, went and sat down by him on the deck, as was their usual custom, as both belonged to the same mess; and whilst they were at breakfast, said Francisco saw the chief officer, Castillo, coming on board in his boat, when he immediately began to tremble very much and the spoon fell out of his hand into the plate; that said Francisco left off eating, got up and went down under the fore-castle; that the said officer, Castillo, then came on board and caused Francisco to be bound, and then took him ashore; that subsequent thereto, he, the deponent, went down into the hold in that part where Francisco had lain asleep, as aforesaid, and there found his knife; that he, the deponent, on communicating the same to the crew on board, they all of them cried out, heave the knife overboard into the sea, for it is reported on shore, that a man

has been killed, and probably it may have been done with this knife as it is all over dirt; that accordingly, he, the deponent, hove the knife overboard: and he deposed, that the aforesaid is all that he knows, and is all that he can say in reply to the questions that have been put to him, and that the whole thereof is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need will repeat it afresh; that he, the deponent, is about twenty-three years of age, a little more or less: and on his said deposition being read over to him, he declared that it was correctly written, that he cannot either add thereto or diminish, he did not sign the same as he said he could not write, his honor the said judge signed hereto, together with his counsellor, which I certify,

YBARRARTE.

Licentiate SAVINON.

In the presence of me

FRANCISCO DE CASTRO.
Notary Public.

Deposition of Francisco de Larrando.]

In the Port of Spain, on the twenty-third day of the month of August, in the year one thousand seven hundred and ninety, his honor the judge of the first election, ordered personally to appear before him Francisco de Larrando, master of the Guarda Costa or coasting vessel belonging to this port, to whom his honor, the said judge, in the presence of me, the notary, administered an oath in due form, on God our Lord and on the Sign of the Cross, and thereon he promised to relate the truth of all whatever he might know, and also to the questions that might be put to him; and on his being interrogated relative to the matter or cause of the institution of this process, and with respect to the other circumstances, as described in this first examination of the sundry parties, he deposed, that at nine o'clock at night of the fourteenth of the present month, he, the deponent, ordered the boat belonging to the Guarda Costa or coasting vessel to be made fast to the stern, and that he asked such of the crew that were on board, who were missing or that were on shore? they all of them said that the negro Francisco only, the slave to Don Manuel Sorzano; that he, the deponent, then regulated the watch, and retired to rest at the aforesaid hour of nine o'clock until the morning, when he found Francisco on board; that he, the deponent, does not know at what time said Francisco came on board, neither has he heard it from any of the people that were on board; and although his honor, the said judge, put a variety of other questions

to him, he constantly replied, that he knew nothing more than what he had deposed, as herein before inserted, and he deposed to the same being the truth on the oath that has been administered unto him, and he confirms and ratifies the same, and in case of need will repeat it afresh; that he, the said deponent, is fifty-five years of age; his aforesaid deposition was then read over to him, and he deposed that the same was correctly written, that he cannot either add thereto or diminish, and he signed hereto together with his honor the said judge, which I certify,

YBARRARTE.

Licentiate SAVINON.

FRANCISCO DE LARRANDO.

In the presence of me

FRANCISCO DE CASTRO.

Notary Public.

Deposition of the Black Woman *Pata de Jamon* or *Pig's Foot*.]—In the Port of Spain, in this windward island of Trinidad, on the twenty-fourth day of the month of August, in the year one thousand seven hundred and ninety, his honor, the said judge of the first election, ordered personally to appear before him in his court, Isabel de Urrestra, alias *Pata de Jamon* or *Pig's Foot*, to whom his honor, the said judge, in the presence of me, the notary, administered an oath in due form, on God our Lord and on the Sign of the Cross, and thereon she promised to relate the truth of all whatever she might know, in reply to the questions that might be put to her; and on her being interrogated with respect to the matter and cause of the institution of this process, and other circumstances thereof, she deposed, that on Saturday the fourteenth day of the present month, she, the deponent, from the time of evening prayer or Ave Maria until eight o'clock at night, was at a house where sundry persons were celebrating a waking, but that she does not know the name of the street, but knows well that it was over the body of a deceased black woman; that a certain Dutch negro named Andres, who was also there at the said waking, began to chaunt the rosary, that he accordingly chaunted it with her the deponent, and with several other persons; she further deposed, that a short time before they had finished the Litanies, Francisco, the black slave of his honor the treasurer, disturbed and quarrelled with them, telling the Dutch black Andres, who recited or gave out the words, that it was not customary to chaunt the Litanies to dead persons, to which said Andres made answer, let us chaunt them, for such is the custom of my country; that Francisco kept

wrangling with said Andres who recited, and high words ensued between them, till finally Francisco threw or struck the said Andres, the reciter, to the ground; that said Francisco then left him, and immediately afterwards struck at an English black woman, but did not reach her; she further deposed, that said Francisco then went out into the street with a stick in his hand with an iron spike at the end thereof, and that she, the deponent well knows Francisco, and also knows that when at any time he may have had a draught of brandy, he becomes mad and much addicted to quarrelling; that in consequence of his having disturbed their chaunting, she, the deponent, went home, and that this, her aforesaid deposition, is all that she knows, and is all that she can depose in reply to the questions that have been put to her; and that the same is the truth on the oath that has been administered unto her, and she confirms and ratifies the same, and in case of need will repeat it afresh; she further deposed, that she is twenty-six years of age a little more or less; her said deposition was then read over to her, and she declared that she cannot either add thereto or diminish, she did not sign hereto as she said she could not write, but his honor the said judge signed hereto, which I certify,

YBARRARTE.

Licentiate SAVINON.

In the presence of me

FRANCISCO DE CASTRO.

Notary Public.

Note.]—There personally appeared in the court of his honor the judge of the first election, the officer of the said judge, who declared, that he had sought after the Dutch negro, who recited or gave out the words of the rosary, at the celebration of the waking, as before described in these proceedings, and he deposed further, that he had been informed by several persons, that the aforesaid negro Andres was absent from this island, having gone on a fishery; the said officer signed hereto, together with me, the notary, which I certify,

JUAN MANUEL LARRAGOITIA,
CASTRO.

Decree.]—Having duly perused and considered the foregoing proceedings, the next legal step to be adopted must be, to take the examination or confession of the criminal Francisco, at the same time charging him with the crime he is accused of, according to the evidence taken and received, as described in the foregoing proceedings, to propose fresh questions to him, and again to admonish and exhort him, as may be suitable and proper, and when accomplished, the

proceedings to be presented and laid before his honor the judge of the first election, who has thus pronounced and decreed, and has signed hereto with the assent of his counsellor aforesaid, in the Port of Spain, in this island of Trinidad, on the twenty-sixth day of the month of August in the year one thousand seven hundred and ninety,

YBARRARTE.

Licentiate SAVINON.

In the presence of me

FRANCISCO DE CASTRO.

Examination or Confession of the criminal *Francisco*.]—In this Port of Spain, in the windward island of Trinidad, on the twenty-eighth day of the month of August, in the year one thousand seven hundred and ninety, his honor the said judge of the first election, ordered personally to be brought before him in his tribunal, a man who is a prisoner in the royal prison, to whom his honor the judge administered an oath, his aforesaid counsellor being also present, and in the presence of me the notary, which said oath was in due form accepted by the prisoner, on God our Lord and on the Sign of the Holy Cross, who thereon promised to declare the truth to all such questions, and cross questions, and admonitions as might be addressed to him; firstly, on his being questioned with respect to his name, of what place he is a native, and where resident, his station or employ in life, his state (that is to say whether married or single), what religion he professes, by whom he has been committed as a prisoner, what may be the cause of his imprisonment, and of what age he might be of; he deposed thereto, that his name is Francisco, and that he is a native of the district of Curiepe, in the province of Caraccas, that he resided in this port, or city, in consequence of his being the slave of his honor Don Manuel Sorzano, who also resides in this place, that his station or employ, is that of a sailor, and is unmarried, that he professes the Roman Catholic Apostolic religion, that he was committed to prison by his honor the judge, before whom he is now brought, that the cause of his imprisonment is the report of his being guilty of murder, and that he is nineteen years of age; under these circumstances for the due and legal continuance of this process, his honor pronounced that he was bound to nominate on the behalf of the prisoner, a procurator or guardian, and accordingly, on the behalf of the said negro Francisco to avoid any nullity or irregularity in the proceedings, his honor the judge, nominated Don Francisco Lubault as procurator, he being one duly admitted,

who in case of acceptance to fulfil said charge on oath, may attend the examination or confession of the criminal, and concert with him all other matters in his defence; and in pursuance of this the decree of the said judge, pronounced on the aforesaid day month and year, his honor signed hereto, together with his counsellor, which I certify,

YBARRARTE.

Licentiate SAVINON.

FRANCISCO DE CASTRO.

Notification to the Procurator and his Affidavit.]—Immediately afterwards Don Francisco Lubault personally appeared in the presence of his honor the said judge, in consequence of his having been summoned in due form, by me the notary; who declared, that he was willing to accept, and accordingly by virtue of this his declaration, he accepted the charge conferred on him, in manner as herein before inserted, which was duly notified to him by me the notary, and he made oath, that he would fulfil the said charge truly and faithfully, and he signed hereto, together with his honor the said judge, which I certify,

YBARRARTE.

FRANCISCO LUBAULT.

FRANCISCO DE CASTRO.

Tutelage of the Criminal, conferred by Authority of the Judge.]—In the Port of Spain, on the same day month and year, his honor, the said judge of the first election, declared that by virtue of these presents, he conferred the charge of procurator or guardian, *ad litem criminalem vel ad lites*, on the behalf of the said Francisco, a criminal and a minor, on Don Francisco Lubault to act as procurator or guardian, nominated by him the said judge, as aforesaid; and he hereby confers on him full and ample power, as far as legally requisite and necessary, that he may either by himself, or by the means of any substitutes who may be empowered by him, act and adopt every legal measure that may be proper and suitable to revoke said substitution, and to depute others afresh to transact in all cases, in defence of the said minor in this criminal process that has been instituted against him, and to appear on his behalf in court against all whomsoever he can or may have to oppose in due form of law, and to plead and prefer on the said behalf petitions, protests, solicitations, accusations, allegations, demurs, denials and conclusions; also to produce and present documents, writings, witnesses, and evidence on this behalf, to demand the benefit of restitution of damages, and to act in all and every respect as he, the minor, could or might do, were he of age, without any restric-

tion whatever, with full free and general administration; and for the whole as aforesaid, and in every occurrence or event herefrom said procurator or guardian is hereby empowered, and his honor the said judge for the purposes aforesaid interposes his authority and judicial decree, and he signed these presents; the witnesses hereto being Don Juan Bentura Yndave, Don Josef Troncozo and Don Antonio Mexias, all of them present and residing in this city.

PEDRO DE YBARRARTE.

FRANCISCO DE CASTRO.

Examination, or Confession of the Criminal *Francisco*.]—In continuation, his honor the said judge, together with his assessor or counsellor, ordered, that the examination, or confession, should be further continued, and prosecuted, in the presence of, and attended by the said procurator, or guardian, which was accordingly transacted in the manner and form as follows; a fresh oath being previously administered to the criminal, in the presence of his procurator, on his being questioned whether he knew, or not, that the killing a fellow creature was a crime deserving of the severest punishment, he declared, that he did know it, and he thus replied to this question. On his being questioned, whether he knew the negro Andres, that had belonged to Mr. Josef, he declared, that he did not know him, and he thus replied to this question. He was then interrogated afresh, how he could say, that he did not know him when it appears, by the documents of this process, that he, the prisoner, and the said Andres, were both of them at a house beyond that of the treasurer's office, where there had been the celebration of a waking of a deceased free black woman, named Anna Side; he declared, that himself, the prisoner, was not at the celebration of the waking, and that in consequence thereof, he had not seen the said Andres; and he thus replied to this question. On his being admonished and exhorted to tell the truth, to fear God, and his justice, not to perjure himself, and thereby aggravate his crime, and become deserving of much heavier punishment, since from the said documents of the process, it is proved, and ascertained, that the criminal was present at the celebration of the waking, and that it was him who had inhumanly committed the murder on the body of Andres, and especially from folio eight, and those that follow, whereby it appears, that the black woman, Sally, of the English nation, deposed that he, the prisoner, entered the house where the celebration of the waking took place, with a whip in his hand, and a knife in his girdle, or

belt, that she, Sally, as we was going home, heard Andres cry out, and saw him, the prisoner, set out a running by the court yard of the house of Don Gaspar de la Guardia; the negro Sanson, who was leaning or reclining at the said house, where the celebration of the waking took place, saw the prisoner come in, with a whip in his hand, and a knife in his girdle, or belt; that he inflicted a cut with his whip on Belci, and that when he, the prisoner, was afterwards in the street, when the disturbance was over, he had begun to make lunges, and to fence with his knife; and that he wounded said Sanson over the eye; at folio fifteen, and those that follow, it appears, by the evidence of Josef Ramon Farias, that he, at ten o'clock at night, of the same day when the celebration of the waking took place, his time of watch expired, and that he, Francisco, was not at that time on board, and that said Josef Ramon Farias had heard it reported on the day following by the sailor Mateo, that he, the prisoner Francisco, had come on board at four o'clock in the morning; and the negro Ignacio, at folio eighteen and nineteen, it appears, by his evidence, that at two o'clock in the morning, he, the prisoner, had not gone on board; that he, the prisoner, had told a sailor, named Vicente, that he had committed a murder on shore; that he pulled out a Flemish knife and hove it into the sea; at folios twenty and twenty-one and twenty-two, the negro woman, Madalena, the property of Don Gaspar de la Guardia, deposes, that she went in company of the prisoner to the celebration of the waking, that the prisoner carried a whip in his hand, and that he had a knife in his belt, or girdle; that he, the prisoner Francisco, quarrelled with the man who recited or gave out the words of the rosary, on that same account; and that he gave to Belci a cut with his whip; that he, the prisoner, challenged all the persons there to fight, and defied them to go with him down the road to St. Ann's; that he took her hat from her; that the negro woman, at a late hour that same night, had told her, Madalena, that he, the prisoner Francisco, had committed a murder; that in consequence thereof, she went to the water side or quay, where she met him, the prisoner, stark-naked with a knife in his hand, that it was then from three to four o'clock in the morning; it also appears that Ramon Roca, a shipmate of him, the prisoner Francisco, deposes that, previous to the hour of one o'clock in the morning when his time of watch expired, that the prisoner Francisco was not then come on board, and that, between four and five o'clock of the said Sunday morning, the prisoner

Francisco came on board, and requested of him and of Josef Antonio Castro, to say, that he, the prisoner Francisco, had slept on board; that about a short time after, he the prisoner Francisco had said that he had no other fear upon him than of his master, and of being hanged, and then giving a slap or blow on the handkerchief said, this is what will be my destruction. The negro woman Sui, the property of madam Hamill, deposes, at folios twenty-five and twenty-six, that he the prisoner Francisco, entered the house where there was a celebration of a waking, with a whip in his hand, that he had words with a Dutch black who was reciting and chanting the rosary, that he gave Belci a cut with his whip, that Sanson came into the house with a wound near his eye, and said that the same had been inflicted by the prisoner Francisco, that on her going away afterwards with Andres, on that same morning, at an early hour, when said Andres made an outcry, she looked back and saw him, the prisoner Francisco, running away. Josef Antonio Castro, at folios twenty-seven and twenty-eight deposes, that previous to three o'clock in the morning of Sunday, the fifteenth day of the present month, he, the prisoner Francisco, had not come on board; that said Francisco afterwards, when on board, told him that, on that same Sunday he had intended to have got banns published or been asked in church, but that in consequence of what had happened, his misfortune was doubled; that the prisoner Francisco then remained some time in suspense, and a short time after said, that he had no other fear upon him than of his master, and of being hanged; that the said prisoner Francisco then gave a slap or blow on the handkerchief, saying, this is what will be my destruction; and that the said prisoner Francisco requested him to say, that he had slept on board. The mulatto Polly, at folios twenty-nine and thirty, deposes, that the prisoner Francisco entered the house where the celebration of the waking took place, late in the night, in company with a black woman, and that he had a whip in his hand, that he quarrelled with a Dutch negro, and that he gave the black woman, Belci, a cut with the whip; that the negro Sanson came in with a wound near his eye, saying, that the same had been inflicted by the prisoner Francisco; and she further deposed, that on her going out towards home with sundry other persons, Andres was behind, and on her hearing him cry out, oh Lord! she looked back and saw the prisoner Francisco running away, and Andres dead on the ground. Ham, at folios thirty-one and thirty-two, deposes, that the

prisoner Francisco, was at the celebration of the waking, with a whip in his hand; that he quarrelled with a Dutch black man; that he gave Belci a cut with his whip, and in the same house he heard it said, that the prisoner Francisco had given the negro Sanson a wound near his eye. The negro Scipion, at folios thirty-three and thirty-four, deposes, that the prisoner Francisco, was at the celebration of the waking, with a whip, and that said Francisco quarrelled with a Dutch negro, that he gave Belci a cut with his whip, and that Sanson came in with a wound near his eye, saying, that the same had been inflicted by the prisoner Francisco, with a knife. Vicente Ferer, at folios thirty-five and thirty-six, deposes, that at twelve o'clock at night of Saturday, the fourteenth of the present month, the prisoner Francisco had not come on board, neither had he at three o'clock in the morning of the day following; that at day-break, or early in the morning, he saw Francisco with different things on than what he had gone ashore in; that the prisoner Francisco, on the morning of the fifteenth, being on board breakfasting on some soup, he saw the king's boat approaching; that thereupon the prisoner Francisco was very much frightened, and began to tremble; that the said prisoner Francisco let fall the spoon with which he was eating, from his hand into his plate or dish; that the said Francisco then went down into the hold, but notwithstanding this he had been taken into custody and conveyed ashore. Juan Bentancurt a sailor belonging to the same Guarda Costa or coasting-vessel, at folio thirty-eight, deposes, that on Saturday he retired to rest at nine o'clock at night, and that he did not see Francisco then on board, and that he never saw him till the morning of the day following. The negro woman Andrea, at folios thirty-nine and forty, deposes, that the deposition or narrative of Madalena is true, and which was read to the prisoner Francisco, and that she, Madalena, had told her, that the prisoner, Francisco, had committed the murder, for when she heard the outcry, or exclamation of oh Lord! oh God! she then got up, and when she had got out into the court, she heard the prisoner Francisco say, "here, here, Madalena, come here my girl;" The sailor Matteo, at folios forty-one and forty-two, deposes that on or between the Saturday night, the fourteenth, and Sunday morning the fifteenth, it was his turn to watch from one o'clock in the morning till two o'clock in the morning of said Sunday the fifteenth; that he did not see the prisoner, Francisco, then on board; that the whole of the crew said that he had been on shore until four o'clock in the morning;

that on the said fifteenth, in the morning, they were all of them eating soup on deck for breakfast, and that on the prisoner Francisco, seeing the royal boat with the king's officer coming on board, he began to tremble and let fall his spoon into his dish or plate; that he found the prisoner's knife; that he the prisoner was afterwards bound and conveyed in custody ashore. Francisco de Larraondo, master of the Guarda Costa, or coasting-vessel, at over leaf of folio forty-two, and at folio forty-three, deposes, that at nine o'clock at night of the fourteenth of the present month, he inquired of the crew that were then on board, whether any one was missing, and that they all of them answered, that Francisco was absent. The black woman, Ysabel, alias Pata de Jamon, or Pig's-foot, at folios forty-four and forty-five, deposes, that she was at the house where the celebration of the waking took place, and that the prisoner Francisco had high words with the man who was chanting the rosary, and that whenever the prisoner had had a draught of brandy that he became mad and very quarrelsome. The prisoner Francisco, in his reply or defence, then *said and declared, that the whole* of the foregoing that has been read to him was *absolutely false*; and furthermore, that he ratifies and confirms the former answers made by him at his last examination, and he thus replied to the whole of the aforesaid. On him, the prisoner Francisco, being questioned where he passed the night of Saturday the fourteenth, until the hour of his going on board the Guarda Costa, or coasting-vessel, he, the prisoner Francisco replied, that during the early part of the evening, he was at the house of his uncle Panchito, and that he passed away the remainder of the time at the house of his master, till nine o'clock, when he went on board the Guarda Costa, or coasting-vessel, and there to sleep; he the prisoner Francisco thus replied to this interrogatory. On his being questioned whether he knew that the crime of perjury was deserving of punishment, he, the prisoner Francisco, replied, that he did know it: and he thus answered this interrogatory. On his being reminded that as he knew the crime of perjury to merit severe punishment, how he could dare to have, and that he had, perjured himself in his answers to the sundry questions and interrogatories that have been put to him, he, the prisoner Francisco, replied, that he had not perjured himself, and that all the depositions of the sundry witnesses were absolutely false: and he, the prisoner Francisco, thus replied to this interrogatory. On his being questioned how he, in the com-

mencement of this examination, could say that he was only nineteen years old, when, at the examination face to face, at folio twelve, and over leaf, it is inserted, that he appeared to be by view of him from twenty-three to twenty-four years old, he, the prisoner, replied, that he does not remember ever having said that he was of that age; whereupon his honor the said judge, ordered this examination to be concluded for the present, and for the same to be resumed whenever occasion required, and thereupon, this said examination having been read over to him, he declared the same to be correctly written, it strictly agreeing with what he, the prisoner, has said in his defence, that he cannot either add thereto or diminish, and he confirms and ratifies the same, and will repeat it afresh, in case of need. He, the prisoner Francisco, did not sign hereto, as he could not write; but his honor, the said judge, signed hereto, together with the counsellor, as also the procurator or guardian of the criminal; all which I, the notary, do hereby certify.

PEDRO DE YBARRARTE.

Licentiate BLAS DE SAVINON.

FRANCISCO LUBAULT.

In the presence of me,

FRANCISCO DE CASTRO.

Order or Decree.] Perused and duly considered the foregoing, and whereas, for the purpose of carrying on this process, in legal form, as the nature of it absolutely requires, and as in this country there is only one other counsellor besides the one who is acting as assessor or counsellor to his honor the said judge, and it being reserved to nominate him in due time, to act in defence of the criminal; Don Pedro Rodriguez de Argumedo, residing in this city, being a person well experienced in matters of law, is hereby nominated to act in this process as fiscal, to whom the same must be made known, for the purpose of obtaining his assent, and that he may be duly sworn, and at the same time to acquaint him, that the motive of the procurator or guardian of the criminal having been present at the examination was, that charge was given him to the intent that the judge might adopt every possible means to ascertain the fact and truth thereof; his honor, the said judge, therefore thought and deemed it best, that the procurator or guardian should be present at the examination, to avoid and prevent the negations of the said criminal; and it is hereby ordered, that a perusal and copy of these proceedings be delivered to the said fiscal; that he may be enabled to frame the accusation or indict-

ment in due form of law.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the said judge of the first election, with the assent of his counsellor, who have both signed hereto in the Port of Spain, on the third day of the month of September, in the year one thousand seven hundred and ninety, which I certify.

FRANCISCO DE CASTRO.

Legal Step or Proceeding.] On the same day, I, the notary, went to the house of Don Pedro Argumedo, and made known to him, the foregoing order or decree, who being duly made acquainted therewith declared, that he had a legal objection against accepting the said charge or office conferred on him; this answer he made to me, and I have drawn this document thereof, which he signed with me, and which I certify.

PEDRO RODRIGUEZ DE ARGUMEDO.
CASTRO.

On perusal of the document foregoing in lieu of Don Pedro de Argumedo, Don Juan Gonzalez is hereby nominated, to whom, on his previously accepting the aforesaid charge or office, these acts or proceedings are to be delivered.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor, the said judge of the first election, with the assent of his assessor or counsellor, who both signed hereto in this Port of Spain, on the sixth day of the month of September, in the year one thousand seven hundred and ninety, which I certify having been done in the presence of me,

FRANCISCO DE CASTRO.

Legal Step or Proceeding.] On the same day, I, the notary, went to the house of Don Juan Gonzalez, to whom I made known the order or decree foregoing, who being duly made acquainted therewith, he declared, that by reason of indisposition (being infirm), he could not accept the office or charge conferred on him; this answer he made to me, and in testimony thereof, I have drawn this document, which he the said Don Juan Gonzalez signed with me, which I certify.

JUAN GONZALES.
CASTRO.

Order or Decree.] Seen and perused the foregoing document, Don Manuel de Yris is by virtue hereof, nominated as fiscal in this cause or process, on the

same terms, and with the same proviso, as the foregoing were nominated.

YBARRARTE.

It was thus pronounced and decreed by his honor, the said judge of the first election, with the assent of his counsellor, who both signed hereto in this city of Port of Spain, on the seventh day of the month of September in the year one thousand seven hundred and ninety, which I certify.

FRANCISCO DE CASTRO.

Legal Step or Proceeding.] On the same day, I made known the foregoing act or decree, to Don Manuel de Yris, who on being duly made acquainted therewith, declared, that he had a legal objection against accepting the charge or office that had been conferred on him; this answer he made to me, the notary. In testimony whereof, I have drawn this document, which he signed with me, and the same I certify.

MANUEL DE YRIS.
CASTRO.

I then delivered back these proceedings into court.

CASTRO.

Order or Decree.] Seen and perused the foregoing document, and there not being in this country any other persons, experienced or versed in law proceedings, to fulfil the office or charge of fiscal, the licentiate Don Joaquin Guillen, counsellor of the royal court of this district, is hereby nominated, to act as fiscal, whom this court had intended to act as counsel in defence of the criminal, and on his acceptance of the office or charge of fiscal, these proceedings are to be then delivered to him.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed, by his honor, the said judge of the first election, with the assent of his assessor or counsellor, who both signed hereto in this city of Port of Spain, on the seventh day of September, in the year one thousand seven hundred and ninety; which I certify.

FRANCISCO DE CASTRO.

To his Honor, the Ordinary Judge;—

The fiscal nominated to frame the accusation or indictment in this cause or process, requests your honor will be pleased to excuse him from accepting this charge or office, being already so fully occupied and employed in other matters, that he has scarce time sufficient to attend to them—Port of Spain, on this tenth day of the month of September,

in the year one thousand seven hundred and ninety.

Licentiate JOAQUIN GUILLEN.

Order or Decree.] Seen and perused the foregoing document, and in consequence thereof, Don Nicholas Vignon, is hereby nominated to act as fiscal, to whom the said nomination must be made known, for the purpose of obtaining his acceptance, and for him to make oath to duly fulfil the charge conferred on him; and when the same shall be accomplished these proceedings are to be delivered to him for his perusal, and a copy thereof is to be delivered to him.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed, by his honor, the said judge of the first election, with the assent of his assessor or counsellor, who both of them signed hereto in this city of Port of Spain, on the eleventh day of the month of September, in the year one thousand seven hundred and ninety; which I certify.

In the presence of me
FRANCISCO DE CASTRO.

I duly notify the foregoing order or decree, to Don Nicholas Vignon, who being made acquainted therewith declared that by reason of his being about to depart for the island of Margarita, for the recovery of his health, he cannot accept of the office or charge that has been conferred on him; and he signed hereto, which I certify.

NICHOLAS VIGNON.
CASTRO.

Whereas, there not being any person whatever willing to accept the office or charge of fiscal in this cause, the proceedings in their actual state must serve as accusation and indictment against the criminal Francisco; and for the purpose of putting him on his defence, notification must be made to him hereof, and at the same instant, that he, the said prisoner Francisco is required to nominate some person, to patronise him, and to undertake his defence, at the same time to intimate to him, that should he fail in so doing, a person will be officially named by the court.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed, by his honor, the said judge of the first election, with the assent of his assessor or counsellor, and who both of them have signed hereto in this city of the Port of Spain, on the thirtieth day of the month of September, in the year one thousand seven hundred, and ninety; which I certify.

FRANCISCO DE CASTRO.

Notification.] On the same day as aforesaid, I, the notary, proceeded to the royal prison, and on my arrival there I notified the foregoing order or decree, to the said prisoner Francisco, criminated by this process, who being duly made acquainted therewith, he declared, that in the afternoon of this same day, he would nominate a person to undertake his defence, and accordingly having returned thither in the evening, he declared, that he nominated the fiscal of the royal revenue to be employed in his defence; which I certify.

CASTRO.

Order or Decree.] Seen and perused the foregoing document, the said nomination must be duly notified to the licentiate Don Joaquin Guillen, and in case of his acceptance of the said office or charge, a copy of these proceedings must be delivered to him.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed, by his honour, the said judge of the first election, with the assent of his assessor or counsellor, who both of them have signed hereto in this city of Port of Spain, on the thirtieth day of September, in the year one thousand seven hundred and ninety; which I certify. Done in the presence of me.

FRANCISCO DE CASTRO.

On the same day, I went to the dwelling-house of the licentiate Don Joaquin Guillen, and duly notified to him, the foregoing order or decree, who thereupon declared, that he would accept, and accordingly he did accept the said charge, and in consequence thereof, I delivered these proceedings into his hands, and he signed hereto; which I certify.

Licentiate JOAQUIN GUILLEN.
CASTRO.

To his Honor, the Ordinary Judge;

The counsellor, in defence of the negro Francisco, against whom these proceedings have been officially carried on under the impression and suspicion of his being the perpetrator of the murder committed on the person of another negro, named Andres, on the fifteenth day of the month of August last past, early in the morning. He thereby represents to your honour, in fulfilment of the charge accepted by him, that he is of opinion, that the evidence brought forward is not of sufficient strength or validity to warrant the said prisoner's being considered as guilty of the murder for the reasons as follow: The legal objections

that exist against the testimony of several of the witnesses inserted in the first examination; and because the informations, and appearances or symptoms that lessen the credit of other witnesses; and even were the same of the most valid nature, and even could they not be controverted they would not then amount to that sufficient proof, as is required by the laws, to warrant the punishment of death, or even any other corporal punishment; and because the wound itself was not mortal, these extreme points shall be demonstrated in due time if the proof thereof can avail; the counsellor for the defence concludes for the present—Given in this city of the Port of Spain, on the eighth day of the month of November, in the year one thousand seven hundred and ninety.

Licentiate JOAQUIN GUILLEN.

Proof to be adduced within the term or space of nine days, the witnesses to be brought forward to confirm their testimony given at their first examination; and in lieu of all such who may be dead or absent, other persons must appear on their behalf.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed, by his honor, the said judge of the first election, with the assent of his assessor or counsellor, who both of them signed hereto, in this city of Port of Spain, on the eleventh day of the month of November, in the year one thousand seven hundred and ninety; which I certify; done in the presence of me.

FRANCISCO DE CASTRO.

On the same day, I the notary duly made known the foregoing order or decree, to the licentiate Don Joaquin Guillen, the counsellor for the defence of the negro Francisco, and to perform the aforesaid I, the notary, went to the dwelling-house of the said Guillen; which I certify.

CASTRO.

In this city of port of Spain, on the eighteenth day of the month of November, in the year one thousand seven hundred and ninety, there personally appeared before his honor the said judge, of the first election, Ramon Roca, a sailor, belonging to the Guarda Costa or coasting-vessel, a witness that has already been examined in this cause, to whom his honor the said judge, in the presence of me, the notary, administered an oath in due form, on God our Lord, and on the Sign of the Cross; and who thereon promised to declare the truth of all whatever he might know, in reply to all whatever questions that might be put to him;

and on his being questioned relative to the circumstances of this process, and on his deposition being read over to him, that is inserted in these proceedings, from folio twenty-three unto folio twenty-four, and over leaf, from the first to the last lines thereof, he deposed, that the whole contents of his said deposition was strictly true; and he confirmed and ratified the same, and would now if required repeat the same afresh, in this plenary Court; that he cannot add thereto, or diminish, and, that he is no way affected by the law of exceptions; the foregoing was then read to him, and he declared that it strictly agreed with what he had deposed, and that he is twenty-five years of age, and he signed hereto, together with his honor the said judge, which I certify.

YBARRARTE.

RAMON ROCA.

Done in the presence of me.

FRANCISCO DE CASTRO.

Confirmation of the testimony of *Josef Antonio Castro*.]—Immediately afterwards there personally appeared, in the presence of his honor the said judge, Josef Antonio Castro, a sailor, belonging to the said Guarda Costa, or coasting-vessel, a witness that has been already examined in the course of these proceedings; to whom his honor the said judge, in the presence of me, the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to whatever questions that might be put to him, and on his being questioned relative to the circumstances of this process and with respect to his deposition from the first to the last lines thereof, which was read over to him, and herein inserted from folio twenty-six and over leaf unto folio twenty-eight, he deposed, that the whole of his said deposition, as herein before written, was given in evidence by him the witness and that the same is true in every respect and he confirms and ratifies the same, and in case of need will now repeat it afresh in this plenary Court, that he cannot either add thereto or diminish, and, that he is no way affected by the law of Exceptions; the foregoing was then read over to him, and he declared that it strictly agreed with the testimony given by him, and that he is twenty-four years of age; he did not sign hereto as he said he could not write, but his honor the said judge signed hereto, which I certify.

YBARRARTE.

Done in the presence of me.

FRANCISCO DE CASTRO

Ysavel Urreste.—Immediately afterwards, his honor the said judge, caused to be brought before him, Ysavel Urreste, alias Pata de Jamon or Pig's Foot, to whom his honor the said judge, in the presence of me the notary, administered an oath, in due form, on God our Lord, and on the Sign of the Cross, and thereon she promised to relate the truth of all whatever she might know, in reply to all such questions as might be proposed to her, and accordingly on her being interrogated respecting this process, and her deposition from the first line to the last line thereof having been first read to her, and which said deposition is inserted in these proceedings, at over leaf of folio forty-three and continued to folio forty-five, she thereupon deposed, that the whole of her said deposition, as expressed therein, was deposed by her, the witness, and that the whole thereof was strictly true; that she confirms and ratifies the same in every respect, and in case of need will now repeat it afresh in this plenary Court; that she cannot add hereto or diminish, and that she is by no means affected by the law of exceptions; the aforesaid was then read over to her, and she declared it to agree with what she had expressed, and that she is twenty-six years of age; she did not sign hereto, as she said that she could not write, but his honor the said judge signed hereto, which I certify.

YBARRARTE.

In the presence of me,

FRANCISCO DE CASTRO.

Confirmation of the deposition made by *Andrea*.—On the same day and for the same purpose, there personally appeared, in the presence of his honor the said judge of the first election, Andrea, the black slave of Don Gaspar de la Guardia, a witness that had already been examined in this cause, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross, and thereon she promised to relate the truth of all whatever she might know, in reply to all such questions as might be proposed to her; and accordingly on her being interrogated respecting the particulars of this process, also relative to her deposition which was read over to her, from the first line thereof to the last, and that is inserted in these proceedings from folio thirty-nine unto folio forty and over leaf thereof, she deposed, that the whole of her said deposition and as expressed therein by her the said witness, was in every respect strictly true, and she confirms and ratifies the same, and she deposed, that in case of need she

would now repeat it afresh in this plenary court; that she cannot either add thereto or diminish, and that she is by no means affected by the law of exceptions: the aforesaid was then read over to her, and she declared, that the same was correctly written, and strictly agreed with the deposition made by her, that she was thirty-five years of age, and she did not sign hereto, as she said she could not write, but his honor the said judge signed hereto, together with the interpreter, which I certify.

YBARRARTE.

DIEGO MEANY, JUN.

Royal Interpreter.

In the presence of me,

FRANCISCO DE CASTRO.

Confirmation of the deposition made by *Sui*.—In continuation, his honor the said judge of the first election caused to be brought before him, the black woman named Sui, a slave belonging to madam Hamill, which said witness had already been examined in this process, to whom his honor the said judge, in the presence of me the said notary, administered an oath in due form, on God our Lord, and the Sign of the Holy Cross, and thereon she promised to relate the truth of all whatever she might know, in reply to all such questions that might be proposed to her; and accordingly on her being interrogated relative to this process and the deposition made by her that is inserted in these proceedings, at folio twenty-four and over-leaf unto folio twenty-six and over-leaf, having been first read over to her from the first line to the last line thereof, she thereupon deposed, that the whole of her said deposition as made and expressed by her the witness, was strictly true, and she confirms and ratifies the same, and in case of need that she would now repeat it afresh in this plenary court, that she cannot add thereto or diminish, and that she is by no means affected by the law of Exceptions; the aforesaid was then read over to her and she declared, that it strictly agreed with what she had deposed, and she further deposed that she was twenty-five years of age; she did not sign hereto, as she said she could not write, but his honor the said judge signed hereto, together with the interpreter, which I certify.

YBARRARTE.

DIEGO MEANY, JUN.

Interpreter, by the royal appointment.

In the presence of me,

FRANCISCO DE CASTRO.

Confirmation of the deposition made by *Polly*.—Immediately afterwards, his honor the said judge of the first election

caused to personally appear before him a female slave, named Polly, belonging to madam Phipps, being a witness that had already been examined in this cause, to whom his honor the said judge, in the presence of me the notary, and by the means of an interpreter, administered an oath in due form, on God our Lord and on the Sign of the Holy Cross, and thereon she promised to relate the truth of all whatever she might know, in reply to all such questions that might be proposed to her; and accordingly on her being interrogated respecting this cause and there having been previously read over to her her deposition, from the first line to the last line thereof, and which is inserted in these proceedings at and from over-leaf of folio twenty-eight to over-leaf of folio thirty, she deposed thereto, that, the whole of her aforesaid deposition as therein written, had been deposed by her the witness, and that the same was strictly true in every respect; and she confirms and ratifies the same, and in case of need would now repeat it afresh in this plenary court; that she can neither add hereto, or diminish; the aforesaid was then read to her, and she declared that it strictly agreed with what had been deposed by her; and that she is by no means affected by the law of Exceptions, that she is seventeen years of age; and she did not sign hereto, as she said that she could not write. His honor the said judge signed hereto, together with the interpreter, which I certify.

YBARRARTE.

DIEGO MEANY. Jun.

Interpreter by the royal appointment.

In the presence of me.

FRANCISCO DE CASTRO.

In continuation, his honor, the said judge of the first election, caused personally to appear before him in his court, the negro Ignacio, a witness that has already been examined in this cause, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly, on his being interrogated relative to this cause and his former deposition having been read over to him, from the first line to the last line thereof, as is inserted in these proceedings at and from folio eighteen unto folio twenty; he deposed, that the whole of his said deposition, as therein expressed, he the witness had deposed by reason of the whole thereof being the

strict truth, and he confirms and ratifies the same, and in case of need will now repeat it afresh in this plenary court; that he cannot either add thereto or diminish, the same strictly agreeing with what he knows of his own knowledge, and on his oath; and he further deposed, that he is by no means affected by the law of Exceptions, and that he is twenty-two years of age; he did not sign hereto as he could not write, but his honor the said judge, signed hereto, which I certify.

YBARRARTE.

In the presence of me

FRANCISCO DE CASTRO.

Confirmation of the deposition made by Mateo.]—Immediately afterwards and for the same purpose, there personally appeared before his honor the said judge of the first election, a sailor, by name Mateo, belonging to the Guarda Costa or coasting vessel, being a witness that has already been examined in this cause, to whom his honor the said judge, in presence of me the notary, administered an oath in due form, on God our Lord and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly, on his being interrogated relative to this cause, and his former deposition being previously read over to him, from the first line to the last line thereof as inserted in these proceedings, at and from folio forty-one as far as folio forty-two, he deposed, that the whole of his aforesaid deposition as therein written, he, the witness, had deposed the same, and that it was strictly true in every respect, and he confirms and ratifies it, and in case of need that he would now repeat it afresh in this plenary court; that he cannot either add thereto or diminish, and that the whole of the aforesaid is the truth on his oath, sworn by him as herein before mentioned, and that he is not in any way affected by the law of Exceptions; the foregoing was then read over to him, and he declared that the same strictly agreed with what he had deposed, and that he is twenty-three years of age; he did not sign hereto as he said that he could not write, but his honor the said judge signed hereto, which I certify,

YBARRARTE.

In the presence of me

FRANCISCO DE CASTRO.

Confirmation of the deposition made by Juan Bittancourt.]—Immediately afterwards there personally appeared before his honor the said judge of the first election, a sailor, named Juan Bittancourt, belonging to the Guarda Costa or coasting vessel, being a witness that has

already been examined in this cause, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross, and thereon, he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly, on his being interrogated relative to this cause, and his former deposition having been previously read over to him, from the first line to the last line thereof, as it is inserted in these proceedings, at and from folio thirty-seven unto folio thirty-eight, he deposed, that the whole contents of his aforesaid deposition as it is therein written, he, the witness, had deposed the same, it being strictly true in every respect; and he confirms and ratifies the same, and in case of need that he would now repeat it afresh in this plenary court, that he cannot either add thereto or diminish, and that the whole of the aforesaid is the truth on the oath that was administered to him as aforesaid; this his said deposition, was then read over to him, and he declared that it correctly agreed with what he had deposed, and that he is not in any way affected by the law of Exceptions; he further deposed, that he was twenty-two years of age, and he signed hereto together with his honor the said judge, which I certify,

YBARRARTE.

JUAN BETANCOURT.

In the presence of me

FRANCISCO DE CASTRO.

Confirmation of the deposition of *Sanson*.]—And immediately afterwards, his honor the said judge of the first election, caused the negro *Sanson* to appear personally before him, who is the slave of Mr. White, and is a witness that has been already examined in this cause; to whom his honor the said judge in the presence of me the notary, and by the means of an interpreter, administered an oath in due form, on God our Lord, and on the sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly, on his being interrogated relative to this cause, and his former deposition having been previously read over to him from the first line to the last line thereof as it is inserted in these proceedings, at and from folio eleven as far as folio twelve, he deposed, that the whole contents of his aforesaid deposition as it is therein written, he the witness had deposed the same, it being strictly true in every respect, and he ratifies and confirms it, and in case of need that he would now repeat it afresh in this plenary

court, that he cannot either add thereto or diminish; the aforesaid deposition was then read to him, and he deposed that it strictly agreed with what he had uttered, and that the same is the truth on the oath that has been administered to him, and that he is by no means affected by the law of exceptions; furthermore that he is thirty-two years of age, he did not sign hereto as he said that he could not write, but his honor the judge signed hereto, together with the interpreter, which I certify,

YBARRARTE.

DIEGO MEANY, JUNR.

Interpreter by royal appointment.

In the presence of me

FRANCISCO DE CASTRO.

Confirmation of the deposition made by the negro *Ham*.]—For the same intent and purpose there personally appeared in the presence of his honor the said judge of the first election, the negro *Ham*, a slave belonging to Don William White, being a witness who has already been examined in this cause, to whom his honor, in the presence of me, the notary, administered an oath by means of an interpreter, on God our Lord, and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions as might be put to him; and accordingly, on his being interrogated relative to this cause, his former deposition having been previously read over to him, from the first line unto the last line thereof, as the same is inserted in these proceedings, at and from folio thirty and over leaf and continued to folio thirty-two; he deposed that the whole of his aforesaid deposition as it is therein written, he, the witness, had deposed the same, it being strictly true in every respect, and he ratifies and confirms it, and in case of need that he would now repeat it afresh in this plenary court; that he cannot either add thereto or diminish, and that the aforesaid is all that he can depose on the oath that has been administered to him; the same was then read over to him, and he declared that it perfectly agreed with what he had deposed, and that he is not by any means affected by the law of Exceptions; furthermore that he is more than twenty-eight years of age, he did not sign hereto, as he said that he could not write, but his honor the said judge signed hereto, together with the interpreter, which I certify,

YBARRARTE.

DIEGO MEANY, JUNR.

Interpreter by royal appointment.

In the presence of me

FRANCISCO DE CASTRO.

Confirmation of the deposition made by *Scipion*.]—Immediately afterwards there personally appeared in the court of his honor, the said judge of the first election, the negro *Scipion*, the slave of *Madam Phipps*, to whom his honor the said judge, in the presence of me, the notary, by the means of an interpreter, administered an oath in due form on God our Lord and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly, on his being interrogated relative to this cause, his former deposition having been previously read over to him, from the first line unto the last line thereof, as the same is inserted in these proceedings, at and from folio thirty-two and over leaf and continued to folio thirty-four; he deposed that the whole of his aforesaid deposition as it is therein written, he, the witness, had deposed, to the same being true in every respect, and he ratifies and confirms it, and in case of need that he would now repeat it afresh in this plenary court, that he cannot either add thereto or diminish, and that the whole of his aforesaid deposition is the truth on the oath that has been administered to him; and that he is not in any way affected by the law of Exceptions: this his said deposition was then read over to him, and he deposed that it was perfectly correct; furthermore that he is twenty-four years of age: he did not sign hereto as he said that he could not write, but his honor the said judge signed hereto together with the interpreter, which I certify,

YBARRARTE.

DIEGO MEANY, Junr.

Interpreter by royal appointment.

In the presence of me

FRANCISCO DE CASTRO.

Confirmation of the deposition of *Francisco de Larraondo*.]—In continuation there personally appeared before his honor the said judge of the first election, *Francisco Larraondo*, master of the *Guarda Costa* or coasting vessel belonging to this port, being a witness that has already been examined in this process, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form on God our Lord, and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions as might be put to him; and accordingly, on his being interrogated relative to this cause, his former deposition having been previously read over to him from the first line thereof unto the last line of his said

deposition, that is inserted in these proceedings at and from folio forty-two and over leaf and continued to folio forty-three; he deposed, that the whole of his aforesaid deposition, as it is therein written, he, the witness, had deposed to, the same being true in every respect, and he confirms and ratifies it, and in case of need, that he would now repeat it afresh in this plenary court, that he cannot either add thereto or diminish, and that this his aforesaid deposition is true on the oath that has been administered to him; it was then read over to him and he deposed to its being correctly written, and that he is not in any way affected by the law of Exceptions, furthermore that he is fifty-five years of age, and he signed hereto with his honor the said judge, which I certify,

YBARRARTE.

FRANCISCO DE LARRAONDO.

In the presence of me

FRANCISCO DE CASTRO.

Testimony of *Ramon Roca* on behalf of *Josef Ramon*.]—On the same day month and year, there personally appeared before his honor the said judge of the first election, *Ramon Roca*, a mariner belonging to the *Guarda Costa* or coasting vessel, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form on God our Lord, and on the Sign of the Holy Cross, and thereon he promised to relate the truth in reply to all such questions that might be put to him, and accordingly on his being interrogated relative to this process, and the motive of his present appearance in court, he deposed, that he knew *Josef Ramon*, both by sight and from habits of intimacy; which said *Josef Ramon* is now absent, that he always did and does consider him to be a good Christian, that he fears God, and that he is a conscientious man, that he has always witnessed and constantly heard it said that all credit was due to his testimony, either in the affirmative or negative, as well in a court of judicature as thereout, and that he, the deponent, never heard any thing to the contrary hereof, and that by reason hereof, he fully believes to be truth the whole of the deposition that has been made by the said *Josef Ramon* in this cause, and that he has not deviated from the truth in any point whatever, that he knows the said *Josef Ramon* to be absent, and that he is not in any way affected by the law of Exceptions, and he, the deponent, declared that this his said deposition, is strictly true on the oath that has been administered to him, furthermore that he is twenty-five years of age, and he signed hereto together

with his honor the said judge, which I certify,

YBARRARTE.

RAMON ROCA.

In the presence of me

FRANCISCO DE CASTRO.

Testimony of *Sui* on behalf of *Sally*.]—

To the same intent and for the same purpose, there personally appeared before his honor the said judge of the first election, the negro woman named *Sui*, to whom his honor the said judge, in the presence of me, the notary, and by the means of an interpreter, administered an oath in due form on God our Lord, and on the Sign of the Cross, and thereon she promised to relate the truth in reply to all such questions that might be put to her, and accordingly, on her being interrogated relative to the motive or origin of this cause, and of her present appearance in court, she deposed that she has known the negro woman *Sally*, by sight, acquaintance and intimacy for some time, said *Sally* being the slave of madam *Jarvis*, and who is now absent; that she considered her to be a Christian, that she feared God, and that she, the deponent herself, always thought her worthy of credit, and has constantly heard the same said by others, whether the testimony of the said *Sally* were given either in the affirmative or negative, and that she, the deponent, had never heard any thing to the contrary, she further declared that the deposition made by the said *Sally* in this cause was the truth, and that she had not deviated therefrom in any point whatever, and that she is not in any way affected by the law of Exceptions, that this, her said deposition, is the truth on the oath that has been administered to her, and that she is twenty-five years of age; she did not sign hereto as she said she could not write, but his honor the said judge signed hereto, together with the interpreter, which I certify,

YBARRARTE.

DIEGO MEANY, JUNR.

Interpreter by royal appointment.

In the presence of me

FRANCISCO DE CASTRO.

Testimony of *Andrea* on behalf of *Madelena*.]—On the same day there personally appeared before his honor the said judge of the first election, the negro woman named *Andrea*, the slave belonging to Don *Gaspar de la Guardia*, to whom his honor the said judge, in the presence of me the notary, and by the means of an interpreter, administered an oath in due form on God our Lord, and on the Sign of the Holy Cross, and thereon she promised to relate the truth in reply to all such questions that might be

put to her; and accordingly, on her being interrogated relative to this cause, and the motive of her present appearance in court, she deposed, that by sight, acquaintance and intimacy she knew the black woman named *Madelena*, a slave of her own master, that she considers her, and has ever considered her, to be a good christian, that she fears God, and has a clear conscience; that she, the deponent, always deemed her to be worthy of all credit, and has heard the same said by others, whether the testimony of the said *Madelena* were given either in the negative or affirmative, and that any thing to the contrary never came to her knowledge; that for the reasons aforementioned, she believes and deems it to be true that the said *Madelena* had deposed the truth in the deposition made by her in this process, and that the said *Madelena* has not in any respect deviated from the truth; furthermore that she, the said deponent, knows the said *Madelena* to be absent, and that she, the deponent, is not in any way affected by the law of Exceptions, that the whole of this her deposition is the truth on the oath that has been administered to her, and that she is thirty-five years of age: she did not sign hereto as she said she could not write, but his honor the said judge signed hereto, together with the interpreter, which I certify,

YBARRARTE.

DIEGO MEANY, JUNR.

Interpreter by royal appointment.

In the presence of me

FRANCISCO DE CASTRO.

Nota Bene.]—That the officer of the court personally appeared in court, and declared to me, the notary, that he had not been able to find *Vicente Ferrer*; said *Ferrer* having left the *Guarda Costa* or coasting vessel, furthermore that he could not meet with any person that knew him to give testimony on his behalf; to the intent that the whole of the aforesaid may appear, I insert this legal document in the proceedings, and the said officer signed hereto with me, which I certify,

JUAN MANUEL LARRAGOITIA.
CASTRO.

Order or Decree.]—Whereas this court has not been informed, that any post or mail has been dispatched for the port of *La Guayra*; due information must be given to his highness, as directed by his royal ordonance, by the medium of his honor the fiscal, said information to be delivered by the notary to the comptroller of the post, taking a receipt thereof,

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the judge of the first election with the assent of his counsellor, who both of them signed hereto, in this city of port of Spain on the eighteenth day of the month of November, in the year one thousand seven hundred and ninety, which I certify,

Done in the presence of me

FRANCISCO DE CASTRO.

Note.]—That the due information was given to his highness, in conformity to the decree, I, the notary, do hereby certify,

CASTRO.

To his Honor the Ordinary Judge;

The counsellor employed in the defence of the negro Francisco, against whom criminal proceedings have been instituted and carried on, for the purpose of ascertaining the facts relative to the murder committed on another negro called Andres, represents to your honor, that this cause having been begun and carried on for the collection of evidence, the usual term is already expired, in pursuance whereof your honor will be pleased to direct publication to be made of the evidence that has been received, and that when annexed to the acts or proceedings the same may be delivered to the counsellor for the defence, that he may allege on this behalf as may be fitting in reply thereto, dated in this city of Port of Spain on the twenty-third day of the month of November in the year one thousand seven hundred and ninety.

Licentiate JOAQUIN GUILLEN.

Order or Decree.]—Granted as required when ready to be complied with.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the judge of the first election, with the assent of his counsellor, who both of them signed thereto, in his city of port of Spain, on the twenty-fifth day of the month of November, in the year one thousand seven hundred and ninety, which I certify.

Done in the presence of me.

FRANCISCO DE CASTRO.

I, the notary, notified the foregoing order or decree, to the party personally, which I certify,

CASTRO.

Petition.]—To his honor the Ordinary Judge.

The counsellor employed in the defence of the negro Francisco, against whom criminal proceedings have been instituted, and carried on for the pur-

pose of ascertaining the facts relative to the homicide committed on another negro named Andres, in due and legal form, represents to your honor, that there having been fixed the term of nine days, for the production of evidence, in pursuance thereof your worship is required to order that the surgeons Don Josef Maria Herrera (permission being first granted by his superior) and Don Juan Clarke, do from their having been present at the inspection of the body, as stated to have taken place at folio seven, declare and certify on oath with respect to the following items.

Item 1st.]—Whether the wound inflicted, on the part of the body as described in the said inspection is from the nature of it mortal, and in case they should not deem it so, that they specify the causes from whence death ensued in so short a time.

2nd. Whether they are of opinion, that on the same instant or moment when the wound was inflicted, that the party could have died, or whether there was sufficient cause for the party to be immediately deprived of life.

3rd. That when the examination or report of these professional men shall have been received and taken, that the same may be annexed to the proceedings, and that judicial orders be issued for the personal appearance of all such persons that saw the dead body, and that in consequence of such order or summons they may declare such circumstances as were then remarked by them, and whether their opinion accords with the opinion on the case, that may be reported by the professional men aforesaid, with respect to the nature of the wound; and when this shall have been transacted, that it be taken as evidence, and reserved till such time as shall be fitting, dated in this city of port of Spain, on the thirteenth day of the month of November, in the year one thousand seven hundred and ninety.

Other Solicitation.]—That for the same purpose your honor may be pleased to order, that Don Agostin Basanta, captain of the Guarda, or armed coasting-vessel belonging to this island, Don Cayetano Llorente, Don Antonio Castillo master of the government-berge or guard row-boat, Francisco Lopez, and other witnesses, that on this behalf may be produced, do depose on oath, with respect to the following items.

1st. Whether they know the negro Francisco, against whom this prosecution or process is carried on.

2nd Item. Whether they have ever

heard it said or reported that said Francisco had ever been prosecuted by justice on any other occasion, for having wounded, maltreated, or injured any one; or whether the disposition of said Francisco, was known to them to be inclined to quarrels and riots, and whether if not on the contrary he was well known to be of a docile, mild, and peaceable disposition, and well behaved towards all people, particularly with his shipmates on board where it is very usual and frequent for disorders and quarrels to happen.

3rd. Item.—That they may depose to what vices they may have observed him to be addicted to.

4th. Item.—That they depose to whether they know the black women, Sally the slave of madam Jarvis, Suy the slave of madam Hammil, and Polly the slave of madam Phipps.

5th Item.—Whether they know or otherwise, that these women go out to work, day work, and lead a disorderly and licentious life without restraint, and are of ill fame, even amongst those of their own colour and description.

6th Item.—Whether these same qualities do not apply to Ysabel Urrete, otherwise Pata de Jamon, or Pig's Foot, and also to the negroes Ham, the slave of Don William White, and Scipio, the slave of madam Phipps, whether they do not bear the same character, and looked upon as such by the whole population of the place, and that they are bad and infamous and of vile report.

7th. Item.—Whether the whole of the aforesaid is not notorious and publicly known, or otherwise; and when said examinations shall have been taken, that the same be connected with the other evidence *ut supra*.

Other Solicitation.]—That your honor may be pleased to give orders, that the notary of these proceedings, and also the other public notaries of this district, do certify, whether in their registers there exists any charge or process, instituted against the said Francisco, in consequence or for having wounded any one, or for any other crime, and in like manner, that the said certificates be connected with the other evidence *ut supra*.

Other Solicitation.]—As in the course of these proceedings it does not appear in any part thereof, what motive his honor the treasurer, Don Manuel Sorzano, the master and owner of Francisco, could have had for the delivering him up to justice as a criminal, your honor is therefore required to demand the due in-

formation on this respect, to the intent that this circumstance may be fully explained, which also is conducive to the evidence on this behalf *ut supra*.

Licentiate JOAQUIN GUILLEN.

Order or Decree.]—Granted both with respect to all the items, as also with respect to the other solicitations in manner as required, and the requisite permission is hereby granted.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and declared, by his honor the judge of the first election, with the assent of his counsellor, who both of them have signed thereto, in this city of port of Spain, on the fifteenth day of the month of November, in the year one thousand seven hundred and ninety, which I certify.

FRANCISCO DE CASTRO.

On the same day, I, the notary, proceeded to the dwelling-house of the licentiate Don Joaquin Guillen, and notified to him personally the foregoing order or decree, which I certify.

CASTRO.

The usual intimation or notice being first given, and leave being granted for that purpose, I laid before his excellency the governor or captain-general, the foregoing order or decree, which I certify.

CASTRO.

Order or Decree of the governor.]—Ordered and decreed, in manner as required by his honor the judge of the first election, due notification thereof to be made by the notary of these proceedings to the sundry persons mentioned who are to be cited in due form, and this process to be returned to the court it belongs to, duly observing the usual formalities.

CHACON.

CUENCA.

It was thus ordered and decreed, by his excellency the governor and captain-general, with the assent of his honor his counsellor, who both of them signed thereto, in this city of Port of Spain, on the sixteenth day of the month of November in the year one thousand seven hundred and ninety, which I certify.

Done in the presence of me.

FRANCISCO DE CASTRO.

I then proceeded to the dwelling house of his honor the judge of the first election, to whom having first practised and observed the formalities as usual and customary, I made known to him the foregoing order, and in witness thereof, I

have drawn this document thereof and certify the same.

CASTRO.

Deposition of *Don Cayetano Llorente*.]—In the city of Port of Spain, on the seventeenth day of the month of November in the year one thousand seven hundred and ninety, there personally appeared before his honor the judge of the first election, Don Cayetano Llorente, captain of his majesty's frigate, called the *Nuestra Senora de las Neve*, to whom, his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord and on the Sign of the Holy Cross; and who thereon promised to relate the truth of all whatever he might know in reply to all such questions that might be proposed to him, and accordingly on his being interrogated relative to the contents of the memorial, the cause of his being cited, that was presented by the counsellor for the defence in this cause of the negro Francisco; he deposed as follows:—

To the first item he deposed, that he knows the negro Francisco, in consequence of said Francisco having served as a sailor on board the frigate under his command for above six weeks; and he thus replied to this item.

To the second item he deposed, that he does not know, and that he never heard it said by any person whatever, that said Francisco had ever been prosecuted at any former time by justice, for wounding, maltreating, or injuring any one, but on the contrary, that he knew him for the space of six weeks and upwards, that said Francisco was on board the ship under his command, no way inclined to quarrels or disturbances; and that he is of a quiet and peaceable disposition, for such was his conduct while on board the frigate under his command, but that he, the deponent, did not know any thing or even observed his conduct while on shore; and he thus replied to this item.

To the third item he deposed, that he never observed any vice whatever in said Francisco's conduct during the six weeks and upwards that he was on board the frigate under his command; and he thus replied to this question.

To the fourth, fifth, and sixth items he deposed, that he was in every respect ignorant of the contents thereof; and he thus replied to these items.

To the seventh item he deposed, that the whole of his aforesaid deposition is publicly and generally known, and that the same is the truth on the oath that has been administered to him, and he

confirms and ratifies the same, and in case of need will repeat it afresh; this his aforesaid deposition was then read over to him, and he declared, that it was correctly written; that he cannot either add thereto or diminish, it being in strict conformity to what he had deposed; furthermore, that he is more than twenty-five years of age, and he signed thereto, together with his honor the said judge, which I certify.

YBARRARTE.

CAYETANO LLORENTE.

In the presence of me

FRANCISCO DE CASTRO.

Deposition of *Don Valentin de Basanta*.]—On the same day, there personally appeared before his honor the judge of the first election, Don Valentin Basanta, captain of the *Guarda Costa*, or armed coasting-vessel, belonging to this island, being a witness produced by the counsellor for the defence of the negro Francisco, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross; and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be proposed to him; and accordingly, on his being questioned relative to the tenor of the foregoing interrogatory, and items thereof, he answered to each of them respectively as follows:—

To the first item, he deposed, that he knows the negro Francisco, against whom this process is carried on, by reason of his having served as a sailor on board the vessel under his command; and he thus replied to this item.

To the second item he deposed, that he does not know, neither has he ever heard it said, that any legal prosecution had been on any former occasion ever instituted against the negro Francisco, for having hurt, ill used, or wounded any other person; that during the six months that the said Francisco had served as a sailor on board the vessel under his command, he never found him to be a man inclined to quarrels, disturbances, or wrangling, but that, on the contrary, the said Francisco was mild, docile, and peaceable; and that during said interval he had never given any cause for censure or complaint against him; and he thus replied to this question.

To the third item, he deposed, that during the said interval he never remarked any depravity in his conduct; and he thus replied to this question.

To the fourth item, he deposed that he knew the negro woman Sally, the

slave belonging to madam Jarvis ; and he thus replied to this question.

To the fifth item, he deposed, that he knew that she was a black woman that goes out to work journey work ; that she leads a bad and vicious course of life, and that her conduct and behaviour are vile, and that her character is notoriously bad ; and that he the deponent, knows that her mistress had sent her off the island, not being able to put up with her conduct for the faults she was guilty as aforementioned ; and he thus replied to this question.

To the sixth item, he deposed, that the same character distinguishes Pata de Jamon, or Pig's-foot, and other qualities still worse, and being a free negro woman, she has not even any place of abode, but that she passes both days and nights under the sheds of houses, or in houses that are building, and that during the chief part of the time she is drunk, and that she gives herself up without restraint to all manner of vice ; he further deposed, that he does not know the other persons whose names are mentioned in this item, and he thus replied to this item.

To the seventh item, he deposed, that the whole of this his aforesaid deposition, is publicly and generally known, and that the same is the truth, on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need, will repeat it afresh. This his said deposition was then read to him, and he declared that it was correctly written, it being in strict conformity to what he had deposed ; that he cannot either add thereto or diminish, and furthermore, that he is more than twenty-five years of age, and he signed hereto, together with his honor the said judge ; which I certify.

YBARRARTE.

VALENTIN DE BASANTA.

In the presence of me

FRANCISCO DE CASTRO,

Deposition of *Francisco Lopez*.]—In continuation, there personally appeared before his honor the said judge of the first election, Francisco Lopez, a seafaring man belonging to the government barge, or row-boat of this port, to whom his honor the said judge in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him ; and accordingly, on his being questioned relative to the contents of the interrogatory herein-before inserted, and

to each of the items thereof, he deposed in the manner as follows :—

To the first item he deposed, that he knows the negro Francisco, against whom this process is carried on, ever since his infancy ; and he thus replied to this question.

To the second item, he deposed, that he never had heard it said or reported, that the said Francisco ever had been prosecuted for having wounded, or ill-used any person of any description whatever ; that on the contrary, he knows him to be of a docile and mild disposition ; and he thus replied to this question.

To the third item, he deposed, that he never knew of any irregularity in his conduct, and he thus replied to this question.

To the fourth item, he deposed, that he only knows the negro woman Sally, the slave belonging to madam Jarvis, to be a quarrelsome woman, and that she leads a dissolute life ; and he thus replied to this question.

To the fifth item, he deposed, that he knows the said Sally to be a woman that works day's work, to be a woman leading an abandoned life, and therefore of vile character ; and he thus replied to this question.

To the sixth item, he deposed, that he knows Ysabel Urreste, otherwise Pata de Jamon, or Pig's-foot, that she is the most abandoned woman that he the deponent ever saw in the whole course of his life, that she has no place of abode whatever ; but that she lives in the street ; that she spends the whole of her time, in drunkenness, or brawls, or sleeping ; that her manners and conduct are most infamous and vile, and that she gives herself up without restraint to all manner of vice ; and he thus replied to this item.

To the seventh item, he deposed, that the whole of his aforesaid deposition is publicly and generally known, and that the same is the truth, on the oath that has been administered to him, and he confirms and ratifies the same and in case of need will repeat it afresh. This, his aforesaid deposition, was then read over to him, and he declared that it was correctly written, that he cannot either add thereto or diminish, it being in strict conformity to what he has deposed ; he further declared, that he is thirty years of age and he signed hereto, together with his honor the said judge, which I certify.

YBARRARTE.

FRANCISCO LOPEZ.

In the presence of me,

FRANCISCO DE CASTRO.

Deposition of *Don Antonio Castillo.*]

—Immediately afterwards, and for the same purpose, there personally appeared before his honor the said judge of the first election, Don Antonio Castillo, master of the government-barge or row-boat, employed upon the watch or look out, a witness produced by the counsellor for the defence of the negro Francisco, the criminal in this cause, to whom his honor the said judge in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross; and thereon he promised to relate the truth of all whatever he might know in reply to all such questions that might be put to him, and accordingly on his being questioned relative to the contents of the foregoing interrogatory and the items thereof, he deposed as follows:—

To the first item, he deposed, that he has known the negro Francisco for a long time past, against whom these proceedings are carried on; and he thus replied to this item.

To the second item, he deposed, that he does not know, neither has he ever heard it said or reported that the said Francisco has ever been legally prosecuted at any former period, for ill using or wounding any person whatever; that he is no way inclined or given to quarrels or disturbances, but on the contrary, that his disposition is docile, mild, and peaceable, towards all descriptions of persons; and he thus replied to this item.

To the third item, he deposed, that he never remarked any depravity whatever, in his conduct or behaviour, during the time that he has known him; and he thus replied to this item.

To the fourth item, he deposed, that he knows the negro woman Sally, a slave belonging to madam Jarvis, and not the other black women whose names are mentioned in the interrogatory; and he thus replied to this item.

To the fifth item, he deposed, that he knows that Sally goes out to work by the day, that she leads an abandoned, dissolute, and vicious life, and is well known to be a woman of bad character, and is reputed as such by the people of her own colour; and he thus replied to this item.

To the sixth item, he deposed, that the same bad qualities and character apply to Ysabel Urreste, otherwise Pata de Jamon, or Pig's-foot; also many other worse qualities, having no place of abode, but lives in the street totally abandoned, and under no restraint whatever; and he thus replied to this question.

To the seventh item, he deposed, that this his aforesaid deposition is publicly and generally known, and that the same is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need will repeat it afresh; his said deposition was then read over to him and he declared the same to be correctly written, that he cannot either add thereto or diminish; furthermore that he is fifty years of age; he did not sign hereto as he said he could not write, but his honor the said judge signed hereto, which I certify,

YBARRARTE.

In the presence of me,

FRANCISCO DE CASTRO.

Deposition of the surgeon *Don Josef Maria Herrera.*—For the purpose of fulfilling the decree herein before inserted pronounced on the memorial, there personally appeared before his honor the said judge of the first election, Don Josef Maria Herrera, to whom his honor the said judge, administered an oath in due form on God our Lord, and on the sign of the Holy Cross, and thereon he promised to relate the truth in reply to all such questions that might be put to him; and accordingly, on his being interrogated relative to the contents of the memorial and the items thereof, he answered in the manner as follows:

To the first item he deposed, that on the fifteenth day of the month of August of the present year, at about seven o'clock in the morning, as he was passing by the gate of the royal hospital in this city, on his way to mass, in company with Don Francisco Caravano, serjeant major thereof, he went into the gallery of the said royal hospital, and that there he saw the corpse of the negro in question; and on his inspection thereof with the most minute attention, incited thereto by the natural and usual curiosity of every professional man, he observed a wound in the middle of the breast, but rather inclining to the left side between the fourth and fifth ribs somewhat oblique from the left side to the right, and about fourteen mathematical lines in length, with a prodigious effusion of blood on the clothes of the corpse, and at the same time he was told that there was a similar effusion on the spot where the wound was inflicted, he remarked that the breast and belly were in their natural state without elevation or swelling, and without any blood about the mouth or nose, but that the eyes were open and their spherity with a smooth superficies; these are the signs or symptoms by which are to be deduced or judged and an opinion to be formed respecting the parts

wounded and the consequences; viz. the prognostic of life or death, for in fact there is not absolutely any other criterion to judge by; he remarked that the wound was inflicted with a cutting instrument, and that possibly or probably it might have been a pointed one, but there was no appearance or sign to ascertain it positively, it had penetrated the teguments, also the large and small pectoral muscles, the former in its center or middle part and the latter towards the left, it had entered between the two aforesaid ribs always in an oblique direction, it had fractured the externus musculus intercostatus; he had thus physically remarked as far as his visual faculties enabled him, the wound being in the direction aforesaid, the arteria intercostata was cut across being a very great artery or one of the chief blood vessels that lies close to the lower part of each rib, and that when any great effusion of blood takes place in consequence of a wound it always issues outwards, and no blood whatever enters into the cavity of the breast although the same may be open; the cause of this phenomenon being the direction and situation of this blood vessel, as was absolutely and actually ascertained by the corpse in question, and by the usual and daily present practice; it is absolutely laid down that these wounds, if not succoured or attended to, generally occasion the loss of seven tenth parts of the blood, in which state the strongest or most robust person will become insensible, and cause a cessation of the circulation; but if in such a case as this, assistance were immediately administered with the Tourniquet applied to the wounded artery with the corroborating measures that are adopted with wounded persons, they are recovered, but in case of no assistance being afforded within a specific time, and that the remainder of the blood should not be capable of vivification, in this case all motion ceases, a coagulation of the blood ensues, and death terminates the insensibility or swoon in two hours, a little more or less, such is the case in point with respect to the state of the corpse herein before mentioned; the surgeons who made their report with respect to the nature of the wound, they state that the wound was three fingers in depth transversely, and most assuredly it had not penetrated the cavity, for the corpse was very robust and corpulent, and from the thickness or size of the muscles the said muscles alone were of more than said thickness, but even had the stab penetrated the said cavity, where are the symptoms of the bleeding inwardly and of the lungs being wounded as they report? it being impossible to know this

without the body being opened which was not done, for the surest consequences of the first would be, the elevation and distension of the cavity, and even this might happen and be occasioned by many other causes, and of which there are a great number and sufficient examples; and of the second there would be appearances of blood about the mouth and nose, and even these do not ascertain the exact nature of the internal wound, yet even these very doubtful symptoms were deficient; therefore there neither was such bleeding inwardly nor any wounded intestine, the whole might possibly be the case, but they had no principle or foundation to support them and to ascertain it; but allowing even that there might be a wound in the lungs such wound is not absolutely mortal, for the deepest wound in this intestine will only bring on a phthisis, neither has it any blood vessel to supply such an effusion of blood into the cavity in any quantity of consideration or consequence; moreover from their report it actually appears, and from the circumstances of the eyes being open, and from the smoothness of their convexity, that there existed clear signs and symptoms that the death was occasioned by languor or loss of blood; and thus in the present case, as there has not been any other point or general rule of the faculty without any exception whatever deduced from the experience of all ages, that every wounded or ruptured blood vessel in any of the cavities is absolutely mortal, so the exterior ones or in parts connected therewith are not so; of this latter description is the said wounded interior artery; in consequence whereof I am bound to declare, and *de facto* do declare, that the wound in question was not absolutely mortal.

To the second item he deposed, that this item is replied to in the first, but that he is bound to say in addition thereto, that the wound having been inflicted in the middle of a very cold and damp night, and where the body fell being on wet ground, and that said wound being inflicted on a negro ill or badly fed although robust, the fainting or swooning was more immediate and death more protracted, and in consequence of no assistance being administered he must have died in two hours, the fainting or swooning lasting almost the whole period or space of time, and appeared to be a dead corpse to all and every one who might not closely and minutely examine the same, if devoid of penetration and practical experience; and he further deposed, that the aforesaid narrative or opinion is all that he has in his power to state in answer to the interrogatories that have been proposed to him, and

that the same is truth, on the oath that has been administered to him, from his professional knowledge, and he confirms and ratifies the same and in case of being required so to do that he would repeat it afresh; this his aforesaid deposition was then read over to him, and he declared it to be correctly written, that he cannot either add thereto or diminish, and he signed hereto together with his honor the said judge, which I certify,

YBARRARTE.

JOSEF MARIA HERRERA.

In the presence of me

FRANCISCO DE CASTRO.

Deposition of *Don Juan Clark*.]—On the same day there personally appeared before his honor the judge of the first election, Don Juan Clark, who made oath in due form on God our Lord, and on the Sign of the Holy Cross, and thereon he promised to declare the truth in reply to all such questions as might be proposed to him, and accordingly on his being interrogated relative to the tenor of the memorial and report of the inspection, he deposed that although he did not see the dead body, he is of opinion by virtue of the declaration made by the surgeon Herrera as aforesaid, that the wound inflicted in the part as described was not mortal in its nature, as the same might have been cured had assistance been administered instantaneously to the wounded person, with the proper surgical remedies; he deposed that the aforesaid is all he knows and is the truth on the oath that has been administered to him; and he confirms and ratifies the same and in case of need will repeat it afresh; he further deposed that he is more than twenty-five years of age, and he signed hereto together with his honor the said judge, which I certify,

YBARRARTE.

JUAN CLARK.

In the presence of me the notary

FRANCISCO DE CASTRO.

On the same day there personally appeared before his honor the said judge of the first election, Don Luiz Barraud and Don Antonio Paniza, the surgeons who attended and inspected the dead body in question, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form on God our Lord, and on the Sign of the Holy Cross, and who thereon promised to declare the truth of all whatever they might know in reply to all such questions that might be proposed to them; and accordingly, on their being questioned with respect to the third item of the interrogatory, they deposed that they had no remark to make on the opinion given

in by the two surgeons Don Josef Maria Herrera and Don Juan Clark, which said opinion had been perused by them, and that they do not object to the substance of the said opinion with respect to the wound inflicted on the deceased negro in question, for by reason of them the deponents not having opened the body, they had been only able to report from the external appearance of the wounded part, that the said wound had been the cause of the decease, and that they did not by any means report that the said wound in its nature was mortal; under these circumstances they ratify and confirm their former deposition without either adding thereto or diminishing. They then declared that the aforesaid is all they know, and that the same is all that they can depose in reply to the questions that have been put to them, and is the truth on the oath that has been administered to them, and they confirm and ratify the same and that if required so to do they will repeat it afresh; they deposed themselves to be more than twenty-five years of age, and they both of them signed hereto, together with his honor the said judge, which I certify,

DON LUIS BARRAUD.

ANTONIO PANIZA.

YBARRARTE.

Done in the presence of me, the notary.

FRANCISCO DE CASTRO.

Information of his Honor the Treasurer.]—On the eighteenth day of the said month and year, I, the notary, went to the royal treasury, and being arrived thereat, I notified the foregoing order or decree to his honor the treasurer, and I also duly made him acquainted with the other solicitation contained in the memorial, and on his being fully informed thereof, he deposed, that as he was going to mass in the morning of the fifteenth day of the month of August in the present year, being Ascension day, and on his passing by the gate of the royal hospital he observed that there was a great concourse of people, and that incited by his curiosity he joined himself with the rest to look at a negro that there lay dead, who was said to have been killed on the preceding night, and in the midst of the said concourse of people he heard it said that it was one of his the deponent's negroes that had committed the crime, in consequence whereof immediately after he had heard mass performed and having returned home, he recollected that of two negroes, his property, who lived from his house, it could only be one of them, by reason of the other being grievously ill or infirm; that from this motive he sought and enquired

after Francisco, which was the one that was in health, and it was ascertained, that the said Francisco was on board the vessel on board whereof he served; that he sent to fetch him by means of the master of the revenue barge, it being the intention of his honor, the deponent, personally to deliver him up to justice, thereby to give a manifest proof that he would not connive at or conceal the excesses of his domestics, and for the purpose of ascertaining the truth of the fact; and accordingly the said negro Francisco came into the presence of him, this deponent, on his order being intimated to him by the said master of the revenue barge; that he, the deponent, took the said negro into one of the inner rooms of his house, and informed him of the cause of his having sent for him, which said crime the said negro Francisco flatly denied having committed; that after him, the deponent, had exhorted him a great variety of times, and reminded him of what he had heard said to incite him to tell the truth, he the said negro Francisco persisted strongly in denying it, and positively asserted that it was not him that had committed the said murder; and that in consequence of these, the said Francisco's answers, he, the deponent, told his said negro, that notwithstanding all he had said in denying it he meant to deliver him up to justice, to the intent that a regular and proper examination should take place, to which the said negro replied to him that he would render himself up with pleasure; that after this, he, the deponent, ordered his said negro to follow him, and he conducted him to the house of his excellency the governor through the street loose and at liberty, and that at eight o'clock in the morning, without the said negro ever having made the least attempt to run away, which he might easily have done if he had so chosen to do, he, the deponent, took him before his excellency the governor, at the same time acquainting his excellency of the motives for taking such steps; that in consequence thereof his excellency returned him thanks for his act of delivering up the said negro, but informed him that the cognizance of the cause did not belong to him, and directed him to conduct the negro to the house of his honor the judge of the first election, which he accordingly performed, the said negro walking alone and at liberty behind him, this deponent; and that on his delivering up the said negro to his honor the said judge, he was by him committed to prison until the truth should be ascertained; to all which the negro acceded without the least complaint walking free and at liberty to the prison

with the man who conducted him; he further deposed that the aforesaid is all the information in his power to give in compliance with the order or decree, and relative to the other solicitation that have required this his deposition, and his honor the said treasurer signed hereto, which I certify,

MANUEL SORZANO.
CASTRO.

On the same day, I notified the foregoing order or decree to Don Antonio Ardila, which I, the notary, do hereby certify.

CASTRO.

Attestation of Don Antonio Ardila Notary Public.]—Don Antonio Ardila, notary public in this windward island of Trinidad, &c. do hereby certify and attest, in the manner and form as in duty bound, and according to my ability; that among the papers and documents legally drawn and registered by me, from the time I have entered on the discharge and exercise of my employ, there is no accusation or process whatever against the negro Francisco, who is deposed to be the criminal in this process; neither are any such to be found among the records in my registry, that have been revised and searched by me, the notary, which said records were registered by my predecessors, of the said Francisco ever having hurt, ill-used, or wounded any person, nor for any other cause or motive: Given in pursuance of the foregoing judicial order or decree, in this city of Port of Spain, on the eighteenth day of the month of November, in the year one thousand seven hundred and ninety.

(L. S.) ANTONIO ARDILA.
Notary Public.

Attestation of Don Francisco de Castro Notary Public.]—Don Francisco de Castro, notary public and official notary to the government of this windward island of Trinidad, &c. do hereby certify and attest in manner and form, as in duty bound and according to my ability; that among the records and registers under my care no suit or process whatever is to be met with against the negro Francisco, the criminal herein before mentioned, for any cause whatever, and in pursuance of the judicial order or decree I have given these presents in this city of Port of Spain, on the eighteenth day of the month of November, in the year one thousand seven hundred and ninety; in testimony of the truth whereof I have signed hereto.

FRANCISCO DE CASTRO.

Attestation of Don Josef Antonio Perez

Notary Public.]—Don Josef Antonio Perez, notary public and official notary to the courts of law of this windward island of Trinidad, &c. do hereby certify and attest in manner and form, as in duty bound and according to my ability; that during the time that I have exercised the functions of my employ, in the offices held by me, I have never received or filed any accusation or process against the negro Francisco (against whom criminal proceedings are carrying on, and on whose behalf evidence is sought for), for any murder or homicide or ill-usage towards any person whatever, or for any other motive or cause; and in pursuance of the judicial order or decree foregoing, I have given these presents in this city of Port of Spain, on the eighteenth day of the month of November, in the year one thousand seven hundred and ninety.

(L. S.) JOSEF ANTONIO PEREZ,
Notary Public and Official Notary to the Courts of Law.

To his Honor the Ordinary Judge;

The Counsellor in defence of the negro Francisco, against whom criminal proceedings are officially carried on, for the purpose of ascertaining the facts and bringing to punishment the perpetrator of the homicide, committed on the body of another negro named Andres, in continuation of the evidence adduced on behalf of the defence in this cause, supplicates, that your honor will be pleased to order and issue directions, that Josef Antonio Naraujo and Juan Josef Vega, may be examined on oath relative to the particulars inserted in the first solicitation included in the foregoing interrogatory, and that they may declare on the said solemnity of their oath, whether they personally know the negro Andres deceased, whether it is well-known to them or otherwise, that said Andres was of a quarrelsome disposition, and much more robust, and much more ferocious than Francisco; and whether it is not true or otherwise, that in the public works of the king, wherein said Andres usually worked, he was frequently giving provocation and offending the other workmen or labourers: Given in this city of Port of Spain, on the eighteenth day of the month of November, in the year one thousand seven hundred and ninety.

Other Solicitation.]—Should it be suitable likewise in support of the defence of the negro Francisco, that evidence and proof should be brought forward of his dexterity in sail-making, in which he is an excellent workman, and that with respect to this Port it is so circumstanced

of being in great want of such good workmen for the service of the shipping: Your honor, therefore, will be pleased to issue orders, that all the witnesses before named in this memorial or solicitation, as well as those described in the former one may be cited, to depose relative to the contents or tenor of this latter solicitation, and that the said deposition may be annexed to the evidence *ut supra*.

Licentiate GUILLEN.

Order or Decree.]—Granted in conformity to the first memorial, and also to the other solicitations.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the judge of the first election, with the assent of his counsellor, who both of them signed hereto, in this city of Port of Spain, on the eighteenth day of the month of November in the year one thousand seven hundred and ninety; which I, the notary, do hereby certify.

Done in the presence of me
FRANCISCO DE CASTRO.

On the same day, I notified the foregoing order or decree to the counsellor for the defence of the negro Francisco; having for the said purpose personally gone to his, the counsellor's, dwelling-house; which I, the notary, do hereby certify.

CASTRO.

Deposition of Francisco Lopez.]—On the same day, month, and year, there personally appeared before his honor, the said judge of the first election, Francisco Lopez, a sailor, being a witness produced and brought forward on behalf of the defence of the negro Francisco; to whom, his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross, who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him, and accordingly on his being questioned relative to the contents of the solicitation annexed to the memorial foregoing, he deposed, that he well-knows the negro Francisco, who is a regular sail-maker, that he understands the said business well, and that capable persons in this line of business or good workmen therein are scarce in this Port: That this his aforesaid deposition is all he knows, and is the truth on the oath that has been administered to him; and he confirms and ratifies the same, and in case of need will repeat it afresh: He further deposed, that he was thirty years of age: this

his said deposition was then read over to him, and he declared, that the same was strictly conformable to what he had deposed; that he cannot either add thereto or diminish, and he signed hereto together with his honor, the said judge, which I, the notary, do hereby certify.

YBARRARTE.
FRANCISCO LOPEZ.

In the presence of me

FRANCISCO DE CASTRO.

Deposition of Don *Antonio Castillo*.]—On the nineteenth day of the month of November, in the year one thousand seven hundred and ninety, there personally appeared before his honor, the judge of the first election, Don Antonio Castillo, master of the government barge or revenue row-boat, being a witness produced and brought forward on the behalf of the defence of the negro Francisco; to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the sign of the Holy Cross; who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him, and accordingly on his being questioned relative to the tenor of the memorial, and respecting the items thereof, he deposed, that he knows for a certainty that the negro Francisco against whom these proceedings are carried on, is a most excellent workman in the sail-making line, and that in this country persons of the like abilities are scarce: That this his aforesaid deposition is all he knows, and is the truth on the oath that has been administered to him; and he confirms and ratifies the same, and in case of need will repeat it afresh; this his aforesaid deposition was then read over to him, and he declared that it was correctly written, it being strictly conformable to what he had deposed; that he cannot either add thereto or diminish; he further deposed that he was fifty years of age, and he did not sign hereto as he said that he could not write, his honor, the said judge, signed hereto, which I, the notary, do hereby certify.

YBARRARTE.

Done in the presence of me, the Notary,

FRANCISCO DE CASTRO.

Deposition of Don *Valantin Barranta*.]—On the sameday, and for the same purpose, there personally appeared before his honor the said judge of the first election, Don Valantin Baranta, captain of the Guarda Costa or coasting vessel, belonging to this Port, being a witness produced and brought forward on behalf of the negro Francisco; to whom his honor

the said judge, in the presence of me, the notary, administered an oath in due form, on God our Lord and on the sign of the Holy Cross; who thereon promised to relate the truth of all whatever he might know in reply to all such questions that might be put to him; and accordingly on his being questioned relative to the tenor or contents of the solicitation annexed to the memorial aforesaid, he deposed, that whereas he, the deponent, is a mariner by profession, and captain of the Guarda Costa or coasting-vessel, belonging to this Port and island, that he has and possesses a good and sufficient knowledge of the furniture, sails, and other materials proper for shipping, for which reason he knows for a certainty, that the negro Francisco against whom these proceedings are carried on, is a most excellent sail-maker, for there having occurred an absolute necessity for repairing and amending the sails of his vessel, the said person, Francisco, was the chief sail-maker of whose services he availed himself, to repair the aforesaid sails; that this his aforesaid deposition is all that he knows, and is all that he can depose, in reply to the questions that have been proposed to him, and is the truth on the oath that has been administered to him; and he confirms and ratifies the same, and in case of need will repeat the same afresh; his said deposition was then read over to him, and he deposed that it was correctly written; that he cannot either add thereto or diminish; and he further deposed, that he was more than twenty-five years of age; and he signed hereto, together with his honor the said judge, which I, the notary, do hereby certify.

YBARRARTE.
VALANTIN DE BAZANTA.

Done in the presence of me

FRANCISCO DE CASTRO.

Deposition of Don *Cayetano Llorente*.]—In continuation, there personally appeared in this court, before his honor the judge of the first election, Don Cayetano Llorente, captain of his majesty's frigate, the Nuestra Senora de las Nieves, being a witness produced and brought forward on behalf of the defence of the negro Francisco; to whom his honor the said judge, administered an oath in due form, who thereon promised to relate the truth, in reply to all such questions that might be put to him, and accordingly on his being interrogated relative to the tenor or substance of the solicitation annexed to the aforesaid memorial, he deposed, that by reason of its having been necessary and requisite to mend the sails of the frigate under his command, it became known

to him that the negro Francisco, against whom these proceedings are carried on, is a sail-maker and is very expert in this business; and he further deposed, that sail-makers of any ability are very scarce and few in this Port, and he declared, that the aforesaid is all that he knows, and that the same is the truth on the oath that has been administered to him; and he confirms and ratifies the same, and in case of need will repeat it afresh; his said deposition was then read over to him, and he declared that it was correctly written, it being strictly conformable to what he had deposed, and that he was more than twenty-five years of age; and he signed hereto, together with his honor the said judge, which I, the notary, do hereby certify.

YBARRARTE.

CAYETANO LLORENTE.

Done in the presence of me

FRANCISCO DE CASTRO.

Deposition of *Josef Antonio Naraujo*.]

—On the same day, month, and year, and in addition to the aforesaid evidence, there personally appeared before his honor the said judge of the first election, Josef Antonio Naraujo, being a witness produced and brought forward on the behalf of the defence, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form on God our Lord, and on the Sign of the Holy Cross; who thereon promised to relate the truth of all whatever he might know in reply to all such questions that might be put to him, and accordingly on his being interrogated respecting the tenor or contents of the solicitation annexed to the memorial hereinbefore inserted, he deposed to each of the items in manner as follows:

To the first item he deposed, that he knows the negro Francisco, and has known him from six to eight years; and he thus replied to this question.

To the second item he deposed, that he does not know, neither has he ever heard that the said negro Francisco ever has been prosecuted by justice on any other occasion for having wounded, hurt, or ill-used any person whatever, that his disposition is no way inclined to quarrels or disturbances, but on the contrary that his temper was peaceable, mild, docile, and reserved towards all descriptions of persons; and he thus replied to this question.

To the third item he deposed, that he never remarked or observed him to ever having been guilty of any depravity whatever in his conduct; and he thus replied to this question.

To the fourth item he deposed, that he knows the negro woman Sally, a

slave belonging to madam Jarvis; that the said Sally goes out to work by the day, that she is of ill fame, and leads a vile and abandoned life; and he thus replied to this question.

To the sixth * item he deposed, that the same bad qualities distinguished Ysavel Urreste, otherwise Pata de Jamon or Pig's Foot, besides many others worse; as she has no place of abode, neither has she any clothes to cover her, nor any place whereat to sleep, other than the public street; he further deposed, that the negroes Ham and Scipio, likewise go out to work by the day, and are ragged negroes, who are continually getting drunk, and lead a bad life, and are by general repute infamous characters; and he thus replied to this question, and with respect to the solicitation to the first item thereof he deposed, that he knew the deceased negro Andres; and he thus replied to this question.

To the second item he deposed, that the said deceased Andres was a turbulent man, much inclined to quarrels and disturbances, and that he was more robust and ferocious than Francisco; and he thus replied to this question.

To the third item he deposed, that it is strictly true, that the said Andres and himself were employed in the king's works, and that said Andres was constantly insulting and provoking him, the deponent, and fighting or quarrelling with all the other labourers; and he thus replied to this question. And on his being interrogated respecting the other solicitation annexed to the memorial, he deposed, that Francisco was an excellent sail-maker; that he, the deponent, has seen him at work; that said Francisco understands his business well, and is very expert therein furthermore; that persons in this line of business expert therein are very scarce; that this his aforesaid deposition is all that he knows and is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need will repeat it afresh; his aforesaid deposition was then read over to him, and he deposed, that it was correctly written, that he cannot either add thereto or diminish, the same being strictly conformable to what he had deposed, and he declared himself to be more than twenty-five years of age; and he signed hereto, together with his honor the said judge, which I, the notary, do hereby certify.

YBARRARTE.

NARAUJO.

Done in the presence of me

FRANCISCO DE CASTRO.

* Omission of the fifth in the original.

Deposition of Juan Josef Vega.—On the same day, and for the same purpose, there personally appeared before his honor the said judge of the first election, Juan Josef Vega, a carpenter, being a witness produced and brought forward on behalf of the negro Francisco, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Holy Cross, who thereon promised to relate the truth of all whatever he might know in reply to all such questions that might be put to him; and accordingly on his being questioned relative to the tenor or contents of the memorials in consequence whereof he was summoned, and respecting the items thereof, he answered in manner as follows:—

To the first item he deposed, that he knows the negro Francisco against whom these proceedings are carried on; and he thus replied to this question.

To the second item, he deposed, that he neither knows, neither did he ever hear it reported, that said Francisco was ever prosecuted by justice for any murder or homicide, wounding, ill-using, or injuring any person whatever; that he never saw or heard of his being inclined to quarrels or wrangling, but on the contrary, his disposition always appeared to be docile, peaceable, and humble, and reserved, with all descriptions of persons; and he thus replied to this item.

To the third item he deposed, that he never remarked or observed any depravity whatever in the conduct of the said Francisco; and he thus replied to this item.

To the fourth item he deposed, that he knows the negro woman Sally, a slave belonging to madam Jarvis; and not the others whose names are mentioned in the memorial; and he thus replied to this item.

To the fifth item he deposed, that the said Sally goes out to work by the day; that she leads an abandoned life, without any restraint whatever, and that she gives herself up to all manner of vice; and he thus replied to this item.

To the sixth item, he deposed, that these same bad qualities and character has Ysavel Urreste, alias Pata de Jamon, or Pig's-foot, and many others still worse, as she has neither any place of abode or clothes, neither has she any visible means of obtaining a livelihood; that she is continually drunk, and every way infamous; that with respect to the negroes whose names are specified in

the memorial, and item thereof, he knows them to be day labourers, rather irregular in their conduct and behaviour, unworthy of notice, and of bad character; and he thus replied to this item.

To the first item of the other solicitation of the memorial, and chief item thereof, he deposed, that he knew the negro Andres, deceased; and he thus replied to this item.

To the second item he deposed, that he knew for certain that the said Andres was of a quarrelsome disposition, and that he was much more robust and ferocious than the said Francisco; and he thus replied to this item.

To the third item he deposed, that it is true, that in the place where the king's works were going on, wherein he, the deponent worked, as well as the said Andres deceased, the said Andres was daily quarrelling and provoking the other day labourers, and wrangling with those of his, the deponent's occupation, which was insufferable; and he thus replied to this item.

On his being questioned relative to the other solicitation, annexed to the memorial, he deposed, that he very well knows that Francisco is a good sail-maker, and reputed to be an excellent workman, and that, on this island there is only one other individual that is as good a workman as the said negro Francisco; furthermore, that persons any way expert in this line of business are very scarce. He then declared, that this his said deposition is all that he knows, and that the same is the truth, on the oath that has been administered to him, and he confirms and ratifies it, and in case of need that he would repeat it afresh; his said deposition was then read to him, and he declared that it was correctly written, that he cannot either add thereto or diminish; and he signed hereto, together with his honor the said judge, declaring at the same time that he was twenty-five years of age, which I, the notary, do hereby certify.

YBARRARTE.

JUAN JOSEF VEGA.

Done in the presence of me,

FRANCISCO DE CASTRO;

Legal Proceeding.—On the twenty-sixth day of the month of November, in the said year, I went through the first examination of these proceedings in pursuance of order for that purpose; which I, the notary do hereby certify.

CASTRO.

Petition.—To his Honor the Ordinary Judge.

The counsellor appointed for the defence in the criminal process that is carried on against the negro Francisco, represents to you, that there having come to his knowledge certain fresh circumstances that he wishes to prove in evidence, and whereas no impediment in law can exist to prevent such evidence being admitted on the behalf and in defence of the criminal, after the expiration of the term for that purpose, its publication and conclusion, and even after sentence pronounced, your honor therefore will be pleased to permit and allow, that Don Antonio Castillo, Don Juan Pablo a Costa, Don Bonifacio Yurne, Don Francisco Larraondo, and Francisco Lopez, may on their oath, depose with respect to the following items:—

1st. Whether they know the negro Ignacio, the cook of the Guarda Costa or coasting-vessel, as also Matheo Ramon Roca, Josef Antonio Castro, and Vicente Ferrer, all of them mariners belonging to the said Guarda Costa or coasting-vessel.

2nd. Whether it is not known to them that the first of them is a slave, and so recently imported that as yet he has never received the Holy Sacrament of Baptism, from his being totally ignorant of the Christian faith, as also of the Spanish language.

3rd. Whether it is not true that the second is an Indian, newly converted, and also but little versed in the Spanish language.

4th. Whether they know, or have ever heard it reported or said, and to whom, that Ramon Roca, or Josef Antonio Castro, or Vicente Ferrer, at any time had a quarrel with the negro Francisco, and whether recollected by them that one of the people before named were ill disposed towards said Francisco, and that likewise either of them owed him a grudge.

5th. That they may depose to the usual hour of breakfast on board the said Guarda Costa or coasting-vessel.

6th. That the said Castillo may depose to the circumstances wherein he was engaged, as stated in the information given in by his honor the treasurer, inserted at folio 87, and that he may state what passed, and what he saw when the said slave Francisco was conducted to the house of his excellency the governor, and whether, when he was conducted from this court, he went free or loose, or whether he was hand-cuffed or any way secured.

7th. That the said Don Antonio Cas-

tillo, Francisco Lopez, and Thomas Andrade, who went in the government-
barge, or row-boat, to fetch the negro Francisco, by order of his master, and to bring him, the prisoner, may depose at what time they got on board the Guarda Costa or coasting-vessel, and whether the crew thereof were at breakfast. Dated in this city of Port of Spain on the fourth day of the month of December, in the year one thousand seven hundred and ninety.

Other Solicitation.]—Also, that your honor may be pleased to order that Josef Antonio Castro, one of the mariners belonging to the Guarda Costa, or coasting-vessel, may depose to what is declared by Ramon Roca, wherein the name of said Josef Antonio Castro is quoted by said Ramon Roca, in his deposition, inserted at folio 23, with respect to when they asked the negro Francisco, whether he had committed the murder on the negro, and he replied that it was a falsehood, and that said Castro may depose whether Roca is not an enemy of the said Francisco, in consequence of a quarrel that took place between them.

Other Solicitation.]—As his honor, the treasurer, Don Manuel Sorzano, probably must know the age of his slave Francisco, your honor is hereby solicited to order the notary employed in this process to receive and take the requisite information, and when the whole of what is solicited as aforesaid shall be fulfilled, in manner as expressed in the memorial, and the other solicitations, it is prayed that the proceedings may be returned to the counsellor for the defence. Dated in this city of Port of Spain as aforesaid.

Licentiate JOAQUIN GUILLEN.

Order or Decree.]—The prayer of the memorial and of the other solicitations is inadmissible.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the said judge of the first election, with the assent of his counsellor and they both of them signed hereto, in this city of Port of Spain, on the sixth day of the month of December, in the year one thousand seven hundred and ninety, which I the notary, do hereby certify.

Done in the presence of me,

FRANCISCO DE CASTRO.

I the notary, went to the house of the counsellor, who presented the memorial, and I notified to him personally the order or decree aforesaid, which he heard and was duly made acquainted with, which I, the notary, certify.

CASTRO.

To his Honor the Ordinary Judge.

The Counsellor appointed to conduct the defence in the criminal proceedings that are judicially carried on against the negro Francisco, petitions your honor against the order or decree that has been notified to him by the notary of this court whereby it is declared, that the further evidence to be adduced on the behalf of the criminal is inadmissible. He, the said counsellor for the defence, represents to your honor, and declares with all due respect that the said order or decree is revocable, the same being contrary to law, "Item Quero (1) * quo tempore accusatus vel inquisitus provaret innocentiam et defensionem suam? In quo articulo utili et quotidiano resolutive duo quod in qualibet parte litis usque ad realem executionem sententiæ poterit eam provare nam primo poterit probare innocentiam et defensionem suam in termino probatorio partibus conseso et assignato per judicem in sententia interlocutoria ad probationem faciendam cum ille terminus requiratur pro causæ cognitione et sit communis utrique parti secundo poterit probare innocentiam et defensionem suam post lapsum termini probaverit imo etiam post publicationem testium et conclusionem in causa quia defensio est a deo privilegiata et jure permisa quod timor subornationis non debet eam excludere ex quo deducitur et ni fertur quod in causis criminalibus conclusis facta a partibus non tollit probationem— Similiter (2) † ad defensionem et innocentiam rei accusati probandam testes et probationes admittuntur post lapsum termini probatorii et post publicationem testium et conclusionem in causa &c." The said counsellor on behalf of the defence could cite and refer generally to all the causes of criminals or parties accused, who have been affected by this point of law, and save himself the trouble of quoting to you the foregoing authorities, for as yet to the present moment no impediment or prohibition ever took place, neither did there occur any controversy or argument between the parties in the cause that might have rendered this point any way doubtful; but he, the said counsellor, duly considering it to be his duty not to refrain from any prolixity, to explain and state his reasons on a subject or matter so delicate and important as a cause

* Gomen Various decisions, Vol. 3, Chap. 13, No. 33.

† Paz in his Practice, Volume 1st, part 5, chapter 3rd, No. 1, 2, 3, 4, and 5,

on the behalf, and in a defence of the life of a man, has deemed it indispensably necessary and requisite to avail himself of this method, to fulfil the charge that this said court has conferred on him; and in consequence thereof to petition, that your honor may be pleased to revoke the foregoing order or decree by a fresh decision, or in such manner as may be fitting; dated in this city of Port of Spain, on the sixth day of the month of December in the year one thousand seven hundred and ninety.

Licentiate JOAQUIN GUILLEN.

Order or Decree.]—The revocation as solicited cannot be complied with, without responsibility and insertion of the clauses or provisions of law that have been quoted.

These proceedings or process must in consequence be returned to the counsellor for the defence, for the purpose of his substantiating the plea now pending within the term prescribed by law.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the judge of the first election, with the assent of his counsellor, who have both of them signed hereto in this city of Port of Spain, on the seventh day of the month of December in the year one thousand seven hundred and ninety, which I, the notary, do hereby certify,

Done in the presence of me

FRANCISCO DE CASTRO.

I, the notary, then proceeded to the dwelling house of the licentiate Don Joaquin Guillen on the aforesaid day, and who not being at home, as I was informed by one of his servants, in consequence whereof I could not notify to him personally the foregoing act, which I, the notary, do hereby certify,

CASTRO.

Petition.]—To his Honor the Ordinary Judge:

The Counsellor appointed to conduct the defence in the criminal proceedings that are judicially carried on against the negro Francisco in due conformity to law represents to your honor, that having petitioned for a revocation of the order or decree, and thereto refusal was made to admit the fresh evidence offered to be produced on the behalf of the criminal, his client; and also that said revocation was inadmissible, notwithstanding the clauses or provisions of law on which the said petition was founded; and in case he, the counsellor for the defence, should not have explained or should not explain

himself with sufficient clearness and perspicuity, he therefore thinks it his duty to renew his arguments, rather than as yet to have recourse to the legal remedies afforded by law of appealing or demurring, which are so very burthensome and prejudicial to the criminal in this process, and which he declines doing for the present, and reserves his said remedies until such time when no other recourse shall be left him; and accordingly thus proceeding and soliciting this delay, he, the said counsellor cannot in this case be considered as responsible for the serious consequences of the greater and longer protraction of the suit, and longer imprisonment of the criminal, therefore the doctrine and opinions of two legal authors were copied in my former petition or representation, whose works are deserving of the greatest attention from the courts of this kingdom, and are the same to which Bolanos refers himself* in support of his own opinion; he, the said counsellor, concludes with representing to your honor, that he had not discovered any difference in the causes of other criminals, natives of the kingdom, that have any similitude or are analogous to the point of law, to which the case in point is reduced, he, the said counsellor, now repeats his aforesaid argument, adding thereto (to dissipate all manner of doubt whatever), that the fresh evidence offered to be produced on the behalf of the criminal is admissible, notwithstanding the term of nine days are expired that were appointed to receive the evidence on this behalf, by reason that this term is not that which is prescribed by law. "The cause being concluded", says Alcaraz in his discourse or writings on the civil laws,† "the judge ought, within the space of six days, to decree or order the cause or process to be received for evidence, to be adduced thereon within such time as he may think proper to allow, as well by reason of the term of eighty days which is the lawful term at all times, whensoever the same may be required it ought to be granted, although or even should the first terms usually and legally allowed be expired, provided the same be done within the term of the said eighty days that are prescribed by law, and during this period of time the witnesses may be put on their oath &c.," from whence it is to be inferred that the consequences in criminal causes or processes being far more important in the event, the said point ought to be granted without hesitation or objection, as being a matter

of right, and as being the more entitled to it in such cases; for even after sentence shall have been pronounced, the judge may judicially and by authority, admit and receive further evidence against the criminal, and also on behalf of his defence; should this inference be of no force or have no effect, it will at least be inferred by the Law 3, Title 16, Part the 3rd, that expresses the following words; "But in all suits and causes of justice, there ought to be allowed to the accuser to enable him to prove his case two terms of periods of time, and to the party accused three, and this in due course the same not being applied for against objections started thereto for non-production of evidence." In the present case no other term has been allowed or granted than that of nine days, in which term the evidence was received, it therefore appears that the counsellor for the defence may with justice claim the allowance or grant of another term for the admission of the fresh evidence he intends to produce. In corroboration of the authorities aforesaid, it is the practice of our own country in criminal causes, as well in the inferior courts as in the superior courts, that we ought to refer to and abide by, and very close to the case in point: *Herrera* reminds us(3)* in his two following chapters: "1st. When all the terms allowed for the production of evidence shall be expired that I have premised, and that may have been made use of in the criminal causes or proceedings, it should so happen either with respect to the prosecutor or to the criminal, that they should require to produce evidence in proof of any circumstance that might be advantageous to the cause of either party, and which said circumstance could not be proved before in consequence of the absence of witnesses, or from any other accidental cause that might have occurred, the course in this case to be pursued is, to represent and make known to the judge the said circumstance, and the reason of said evidence not being produced before, whether for the accusation or for the defence, and then to conclude petitioning that the said evidence may be admitted; and it will then depend on the justice and the actual state of the process or proceedings, for the judge to determine the remedy; without expressing in the petition any thing about renewing or specifying the term for the judicial evidence, for although the said term is usually allowed or granted, it is not proper for the petitioner or party concerned to prescribe the same to the judge. 2nd. For this pretension or claim

* Bolanos 3, P. 15, No. 9.

† Alcaraz P. 1, No. 50.

* *Herrera*, Book 20, Part 2, § 5, No. 17.

there is no distinction of persons, neither are those who lay such claim under the necessity of being invested with any exclusive privilege whatever, but it merely depends on the plea being well founded or otherwise, and as such it is to be decided on by the judge, and should the judge deem the plea well founded, he may renew a term for the evidence for such length of time as may appear to him to be suitable and proper for the transacting whatever legal measures as may be proposed, and although the term may be granted and the cause opened afresh at the solicitation of one party, it is usual and legal from the same motives to renew and re-open the cause on the same occasion at the solicitation of the other party, and when this shall have been once granted it becomes reciprocal to both and all parties in the same manner as all the other terms are." And what plea or foundation can be better founded on reason, and what more suitable, than for the counsellor for the defence at this moment to object and allege against the evidence given by bad and suspicious characters, as stated in the interrogatory, by reason of the said circumstances not having come to his knowledge at an earlier period of time, nor the defects in the evidence of the persons whose names are therein mentioned? Even if this cause were not judicially or officially prosecuted, and even were he, the counsellor for the defence, a party unknown to the court, there ought to be granted and allowed him a term after the publication of the evidence for the purpose of making or stating the objections thereto. Finally, from the single circumstance of the criminal being a minor, as declared in this examination, there ought to be granted and allowed him a fresh term without that charge against him having any effect wherein he is implicated, with respect to his age, for there does not appear in the process or proceedings any implication whatever on comparing, or between what is written with respect to the examination face to face, inserted at folio 8, and his subsequent examination; inasmuch as in the former, the notary of this process only certifies that the criminal appeared to be from twenty-three to twenty-four years of age, which said expression or insertion not having been uttered by him, the criminal agrees and supports the reply made by him at his examination, that he did not remember ever having said that he was of such an age. In pursuance and by virtue of such well founded arguments, he, the counsellor for the defence, hopes that the court will be pleased to revoke (as prayed for by him) the said order or decree, and

grant such remedy as may be suitable to the intent that he, the said criminal, may not be deprived of his defence; dated in this city of Port of Spain, on the tenth day of the month of December in the year one thousand seven hundred and ninety.

Licentiate JOAQUIN GUILLEN.

To his Honor the Ordinary Judge;

The Counsellor for the direction and prosecution of this cause with preference of civil causes represents to you; that it being the holy spirit and intent of the laws that crimes should be punished, as an example due from the public vengeance, and that exemplary punishment should be inflicted on the perpetrator, has thought proper to dictate and advise the order or decree declaring the solicitation of the counsellor for the defence, praying to be allowed and permitted to produce further evidence on behalf of the negro Francisco, to be inadmissible by reason of the usual term for the production of evidence on that behalf being expired. The wholesome intent of the laws and doctrines that have been quoted, to the intent that after the expiration of the term for producing evidence, witnesses may be admitted on behalf of the defence of the criminal, is when the innocence of the party accused may be apparent or presumed from the proceedings or evidence already adduced relative to the fact; this is the literal meaning and real opinion of the counsellor for the prosecution, in which he may possibly err in judgment. From the proceedings the criminality of Francisco is apparent, and no symptom of his innocence appears in any part of the evidence adduced, these motives have urged and incited the counsellor for the prosecution, to request that your honor will be pleased to excuse his further interference in the prosecution of this cause, and thereby will be avoided the resources of demurring and appealing; dated in this city of Port of Spain, on the eleventh day of the month of December in the year one thousand seven hundred and ninety.

Licentiate BLAS SAVINON.

Order or Decree.—In pursuance of the licentiate Savinon having declined interfering further in the prosecution of this cause, these acts or proceedings must be laid before his honor the auditor for the war department, for the purpose of his advising the decree or order relative hereto as may appear to him conformable to law.

YBARRARTE.

It was thus ordered by his honor the judge of the first election, who signed hereto in this city of Port of Spain, on

the eleventh day of the month of December in the year one thousand seven hundred and ninety, which I the notary do hereby certify,

Done in the presence of me

FRANCISCO DE CASTRO.

On the same day, I the notary, notified and made known the foregoing decree to Don Joaquin Guillen, the counsellor for the defence of the negro Francisco, having for that purpose gone to the dwelling house of the said Guillen, which I, the notary, do hereby certify,

CASTRO.

To his Honor the Judge of the First Election;

The multiplicity of business and the many important concerns that I have at the present conjunction to attend to, as is well known to your honor, do not permit me to advise your honor in this cause in the manner as I might wish to do; in consequence whereof, as there is no other lawyer or counsellor in this place than the licentiate Don Blas de Savinon, and as he has no just cause whatever to decline acting as counsellor for the prosecution in this cause, I am of opinion that you may compel him to continue counselling you in this cause; dated in this city of Port of Spain, on the fourteenth day of the month of December in the year one thousand seven hundred and ninety.

JOSEF DE CUENCA.

Order or Decree.]—In pursuance of his honor Don Josef Damian de Cuenca having declined any interference in this cause, and whereas, in this place there is no other counsellor to act as such and advise his honor the said judge, intimation thereof must be made to the licentiate Don Blas de Savinon that he must continue to act as counsellor for the prosecution in this cause, by reason that neither his honor the said judge, neither any of the parties concerned have had any just cause or motive to doubt his probity and justice.

YBARRARTE.

It was thus ordered by his honor the judge of the first election, who signed thereto in this city of Port of Spain on the fourteenth day of the month of December in the year one thousand seven hundred and ninety, which I the notary do hereby certify,

Done in the presence of me

FRANCISCO DE CASTRO.

I duly made known and notified the foregoing order or decree, to the licentiate Don Blas de Savinon, to him personally in his dwelling house; which I, the notary, do hereby certify.

CASTRO.

Order or Decree.]—On due consideration the order or decree pronounced on the seventeenth* of the present month, is hereby revoked, by a decree or order to the contrary; and in consequence hereof this cause is opened afresh for the production of further evidence for the term of nine days; as far as suitable and allowable by law, the prayer of the counsellor for the defence is granted in manner as expressed in his petition or memorial, and also the other solicitations annexed thereto, as inserted at folio ninety-eight.

YBARRARTE.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor the said judge of the first election, with the assent of his counsellor, who both of them signed hereto, in this city of Port of Spain, on the sixteenth day of the month of December, in the year one thousand seven hundred and ninety, which I, the notary, do hereby certify,

Done in the presence of me,

FRANCISCO DE CASTRO.

Notification.]—On the same day I made known the foregoing order or decree, personally to the counsellor for the defence, which I, the notary, do hereby certify.

CASTRO.

Although the term for the admission of evidence is expired, the cause is by virtue of this order opened afresh for the term of nine days; his honor the judge of the first election, thus ordered and decreed, and he signed hereto, with the assent of his counsellor, in this city of Port of Spain, on the fourteenth day of the month of January, in the year one thousand seven hundred and ninety-one, which I, the notary do hereby certify.

LETAMENDI.

Licentiate SAVINON.

Done in the presence of me,

FRANCISCO DE CASTRO.

Declaration of Don Antonio de Castillo.]—In this city of Port of Spain, in the windward island of Trinidad, and on the fourteenth day of the month of January, in the year one thousand seven hundred and ninety one, his honor the judge of the first election, ordered personally to appear before him, Don Antonio del Castillo, a witness produced and brought forward by the counsellor for the defence of the criminal herein before mentioned

* Should be the sixth.—Error in Original.

in these proceedings, to whom the said judge, in the presence of his counsellor, administered an oath in due form on God our Lord, and on the Sign of the Cross; who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly on his being questioned respecting the tenor of the interrogatories contained in the memorial, inserted at folio ninety-eight, he replied to each of them in manner as follows:—

To the first item thereof, he deposed, that he personally knew the individuals whose names are therein mentioned; and he thus replied to this item.

To the second item he deposed, that he well knows the contents thereof to be true, and that the said individual is one recently imported; and he thus replied to this item.

To the third item he deposed, that it is true that the man therein named is an Indian recently converted, and that he the said Matheo is very ignorant of the Spanish language; and he thus replied to this question.

To the fourth item he deposed, that he well knows that the individuals, whose names are therein mentioned, have had several quarrels and disputes with the said Francisco by reason of his being a slave, and from their wanting him to wait on them and take their watch for them whilst they might wish to be on shore; and he thus replied to this item.

To the fifth item he deposed, that the usual hour of breakfasting on board the *Guarda Costa* or coasting-vessel, was at eight o'clock in the morning; and he thus replied to this item.

To the sixth item he deposed, that on his fulfilling the duty or orders he received from his honor the treasurer of the royal revenue, as stated by the latter in his information; he deposed, that it is true, that on the day that the murder was committed of which the negro Francisco is accused of, but which day he cannot now mention exactly or precisely, he was ordered by his honor the treasurer of the royal revenue, to go on board the *Guarda Costa* or coasting-vessel, and fetch the said negro Francisco to him; that accordingly he went on board the said vessel in a canoe, and found him on the fore-castle along with the rest of the crew that were on board; that he brought him on shore and conducted him to the house of his master, who questioned and interrogated him closely relative to the murder that had been committed; that the said negro Francisco

persisted that he was not the person that had done it; he further deposed, that he had conducted him to his master without being hand-cuffed or any restraint upon him whatever, who when he was delivered up to justice, that he went in like manner without being ironed or hand-cuffed or any restraint whatever; and he thus replied to this item.

To the seventh item he deposed, that when he went on board the *Guarda Costa* or coasting-vessel to fetch Francisco, the crew were not at breakfast; and that this his aforesaid deposition is all that he knows, and is all that he can depose in reply to the questions that have been put to him, and is the truth on the oath that has been administered to him; and he confirms and ratifies the same, and in case of need will repeat it afresh; he further declared that he was fifty years of age; his said deposition was then read over to him, and he declared that it was correctly written, that he cannot either add thereto or diminish; he did not sign hereto as he said he could not write, but his honor the said judge signed hereto, together with his counsellor, all which I the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

Done in the presence of me,

FRANCISCO DE CASTRO.

Deposition of *Francisco Larraondo*]—
In continuation, his honor the said judge of the first election, ordered that there should personally appear before him Francisco Larraondo, master of the *Guarda Costa* or coasting-vessel, belonging to this port, to whom his honor the said judge, in the presence of his counsellor, and also in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Cross, and thereon he promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly on his being questioned relative to the tenor or substance of the items inserted in the interrogatory or memorial presented by the counsellor for the defence, and that is inserted at folio ninety-eight of these proceedings, to each of the said items he replied in the manner as follows:—

To the first item he deposed, that he knows all the individuals whose names are mentioned in the said item, who are all of them mariners belonging to the *Guarda Costa* or coasting-vessel; and he thus replied to this item.

To the second item he deposed, that

it is true, that the said slave has been recently imported and is not a Christian, and he also well knows that the said slave can speak but very few words of Spanish, and those not distinctly; and he thus replied to this item.

To the third item he deposed, that the said Matheo is an Indian, and is as ignorant as the negro who is described in the last item, and that he does not know whether he has been baptised or not, as he was admitted into the service in this port; and he thus replied to this item.

To the fourth item he deposed, that he knows that the said Francisco had a quarrel with the individuals whose names are mentioned in this item, when they sailed to Naparima, to meet the Galleon, and this he well knows from the same having been told him by the said mariners; and he thus replied to this item.

To the fifth item he deposed, that the usual hour of breakfasting on board the Guarda Costa or coasting-vessel, is at eight o'clock in the morning, sometimes a little sooner and sometimes a little later, according to the duty or work they may have to do on board, and that this his aforesaid deposition is all that he knows, and is all that he can depose in reply to the questions that have been put to him, and is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need will repeat the same afresh; he further declared, that he was fifty-four years of age; his aforesaid deposition was then read over to him, and he deposed that it was correctly written, that he cannot either add hereto or diminish; and he signed hereto together with his honor the said judge, and his counsellor, which I the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

FRANCISCO DE LARRAONDO.

In the presence of me,

FRANCISCO DE CASTRO.

Declaration of *Juan Betancur*.]—Immediately afterwards for the same purpose, his honor the said judge ordered that there should personally appear before him, Juan Betancur, a mariner belonging to the Guarda Costa or coasting-vessel, to whom his honor the said judge, in the presence of his counsellor, and also in the presence of me, the notary, administered an oath in due form, on God our Lord, and on the Sign of the Cross, who thereon promised to relate the truth of all whatever he might know,

in reply to all such questions that might be put to him; and accordingly on his being questioned relative to the tenor or substance of the items of the memorial inserted at folio ninety-eight of these proceedings, to each of them he replied in the manner as follows:—

To the first item he deposed, that he knows all the individuals whose names are mentioned in this item; and he thus replied to this item.

To the second item he deposed, that with respect to the negro whose name is therein mentioned, he does not know whether he is a Christian or not, and that the said negro speaks but very few words of the Spanish language, and that these few words he pronounces very badly, he being a negro newly imported; and he thus replied to this item.

To the third item he deposed, that it is true that Matheo is an Indian, and is in doubt whether he is a Christian or not, and that he speaks the Spanish language but very badly; and he thus replied to this item.

To the fourth item he deposed, that it is true that the individuals whose names are mentioned in this item have had several quarrels with Francisco, and that when at Naparimo, Ramon Roca seized and laid hold of Francisco and that they came to blows one with the other; and he thus replied to this item.

To the fifth item he deposed, that the usual hour of breakfasting on board the Guarda Costa or coasting-vessel, was at eight o'clock in the morning and rather before than after that time, according to the duty or work they might have to do on board; and that this his aforesaid deposition is all that he knows, and is all that he can depose, in reply to the questions that have been put to him, and is the truth on the oath that has been administered to him; and he confirms and ratifies the same, and in case of need will repeat it afresh; he then deposed that he was twenty-two years of age; this his said deposition was then read over to him, and he declared, that it was correctly written, that he cannot either add thereto or diminish; and he signed hereto, together with his honor the said judge, and his counsellor, all which I the undersigned notary do hereby certify.

LETAMENDI.

Licentiate SAVINON.

JUAN BENTANCUR.

Done in the presence of me,

FRANCISCO DE CASTRO.

Declaration of *Don Juan Pablo a Costa*.]—In this city of port of Spain, in the windward island of Trinidad on the

eighteenth day of the month of January, in the year one thousand seven hundred and ninety-one, his honor the said judge of the first election, ordered that there should personally appear before him, Don Juan Pablo a Costa, for the purpose of giving the evidence, prayed and petitioned for by the counsellor for the defence of the negro Francisco, to whom his honor the said judge, in the presence of me the notary, and the counsellor for the prosecution being likewise present, administered an oath in due form on God our Lord, and on the Sign of the Holy Cross, who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him; and accordingly on his being questioned relative to the tenor or substance of the items contained in the memorial that is inserted at folio ninety-eight in these proceedings, to each of the said items he replied in the manner as follows:—

To the first item he deposed, that he knows the individuals whose names are mentioned in this item, the first of them being cook of the Guarda Costa or coasting vessel, and the others being mariners belonging thereto; and he thus replied to this item.

To the second item he deposed, that the negro Ynacio has been recently imported, and that he does not know whether the said Ynacio has ever been baptised, and that he speaks but little Spanish, and that he pronounces his words very badly; and he thus replied to this item.

To the third item he deposed, that the said Matheo is an Indian from Arruaca, and that he is uncertain whether he is a Christian or not; furthermore, that he is very ignorant of the Spanish language; and he thus replied to this item.

To the fourth item he deposed, that whereas he, the deponent, is clerk of the said Guarda Costa or coasting vessel, he well knows, and is certain, that the individuals whose names are mentioned in this said item have had two quarrels with the negro Francisco, the first of them, because they would not suffer him to mess with them, of which the said Francisco made his complaint to him, the deponent, who said, that he had told them that they were all sailors alike; and he deposed, that the other quarrel happened in the two voyages they made to Naparima, when on both occasions they had left the said Francisco on shore, and on which said occasions, the said Francisco had sought refuge in the lodging of him, the deponent; and he thus replied to this item.

To the fifth item he deposed, that the usual hour of breakfasting on board the Guarda Costa or coasting vessel, is regularly at eight o'clock in the morning, sometimes earlier and sometimes later, according to the work or duty they might have to perform, and he thus replied to this item; and he further deposed, that this his aforesaid deposition is all that he knows, and is all that he can depose, in reply to the questions that have been put to him, and that the same is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need that he will repeat it afresh; and that he is thirty-six years of age; his aforesaid deposition was then read over to him, and he declared the same to be correctly written, that he cannot either add thereto or diminish, and he signed hereto, together with his honor the said judge, and his counsellor all which I, the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

JUAN PABLO A COSTA.

Done in the presence of me.

FRANCISCO DE CASTRO.

Declaration of *Francisco Lopez*.]—For the same purpose his honor the judge of the first election, ordered personally to appear before him in his court, Francisco Lopez a mariner belonging to the king's barge, to whom (his counsellor being then and there present) in the presence of me the notary, his honor the said judge, administered an oath in due form, on God our Lord, and on the Sign of the Cross; who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him, and accordingly on his being questioned relative to the tenor or substance of the items contained in the memorial presented by the counsellor for the defence, and which is inserted at folio ninety-eight; to each of the said items he replied as follows:

To the first item he deposed, that he knows Ignacio the negro, but that he does not know whether he is cook on board the Guarda Costa or coasting vessel or not, and he thus replied to this item; and furthermore that he also knows Matheo and Ramon Roca, but not Josef Antonio Castro or Vicente Ferrer, and his knowledge of the two former from their being mariners belonging to the Guarda Costa or coasting vessel; and he thus replied to this item.

To the second item he deposed, that he knows the negro Ignacio to be a slave recently imported, and that he does not know whether he is a Christian or not,

and that he speaks but very little Spanish; and he thus replied to this item.

To the third item he deposed, that Matheo is an Indian, but that he does not know whether he is a Christian or not, and that he speaks but very little Spanish; and he thus replied to this item.

To the fourth item he deposed, that he was ignorant with respect to any of the contents thereof; and he thus replied to this item.

To the fifth item he deposed, that the usual hour of breakfasting on board the Guarda Costa or coasting vessel, was at eight o'clock in the morning; and he thus replied to this item.

To the sixth item he deposed, that he together with the other persons whose names are mentioned in this item, by order of his honor the treasurer, had gone on board the Guarda Costa or coasting vessel, that they accordingly got on board thereof, at about eight o'clock in the morning on the same day that it was reported Francisco had committed the murder, and that all the people were then at breakfast. That they then brought the said Francisco bound to the house of his master, who then ordered them to set him at liberty. He deposed, that this his said deposition is all he knows and is all that he can say in reply to the questions that have been put to him, and that the same is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need will repeat it afresh; furthermore, that he is thirty years of age; this his said deposition was then read over to him, and he declared that it was correctly written, that he cannot either add thereto or diminish, and he signed hereto, together with his honor the said judge, and his counsellor which I, the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

FRANCISCO LOPEZ.

Done in the presence of me

FRANCISCO DE CASTRO.

Immediately afterwards his honor the said judge of the first election, ordered that there should personally appear before him in his court, Don Bonifacio Yurre, the boatswain of the Guarda Costa or coasting vessel, to whom his honor the said judge (his counsellor being then and there present) in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Cross; who thereon promised to relate the truth of all whatever he might know in reply to all such questions that

might be put to him, and accordingly on his being questioned relative to the tenor or substance of the items contained in the memorial presented by the counselor for the defence; he replied thereto in the manner as follows: To the first item he deposed, that he knows the negro Ignacio, as also the other individuals whose names are mentioned in this item, that he knows the former from his being cook on board the Guarda Costa or coasting vessel, and that he knows the others from their being mariners belonging to the said vessel; and he thus replied to this item. To the second item he deposed, that the said Ignacio is a negro slave newly imported, but does not know whether he is a Christian or not; and that he speaks the Spanish language very badly; and he thus replied to this item. To the third item he deposed, that Matheo is an Indian, and who was baptised at Guayana, and whose godfather is now living there, but whose name he does not now remember although the same was given in and made known to the solicitor of the royal revenue of this island, and that the said Matheo speaks Spanish but very badly; and he thus replied to this item. To the fourth item he deposed, that he merely knows by report and hearsay from Francisco Antonio Castro,* that Ramon Roca and the negro Francisco had had a quarrel; and he thus replied to this item. To the fifth item he deposed, that the usual hour of breakfasting on board the Guarda Costa or coasting vessel was at eight o'clock in the morning and sometimes sooner and sometimes later, according to the work or duty they might have to do on board, and he declared that this his aforesaid deposition is all that he knows, and is all that he can say, in reply to the questions that have been put to him and is the truth on the oath that has been administered to him, and he confirms and ratifies the same, and in case of need he will repeat it afresh; he declared himself to be twenty-eight years of age, his aforesaid deposition was then read over to him, and he deposed that the same was correctly written, that he cannot either add thereto or diminish, and he signed hereto, together with his honor the said judge, and his counsellor, which I, the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

BONIFACIO YURRE.

Done in the presence of me

FRANCISCO DE CASTRO.

Declaration of *Josef Antonio Castro*.]—

* (Should be) Joseph Antonio Castro.—
Error in Original.

In this city of Port of Spain, on the nineteenth day of the month of January in the year one thousand seven hundred and ninety-one there personally appeared before his honor the said judge of the first election, Josef Antonio Castro, a mariner belonging to the Guarda Costa or coasting vessel belonging to this said Port; to whom his honor the said judge in the presence of his counsellor, and also in the presence of me, the notary, administered an oath in due form, on God our Lord and on the sign of the Cross; who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him, and accordingly on his being questioned relative to the tenor or substance of the items contained in the memorial that is inserted at folio ninety-eight of these proceedings, and which was presented by the counsellor for the defence of the criminal Francisco, he to each of the said items deposed in the manner as follows:—To the first item he deposed, that with respect to what is quoted relative to him, as inserted at folio twenty-four and which was read over to him *de verbo ad verbum*, the whole contents thereof are true, and that the said conversation or expressions as therein described had truly and actually taken place, and he furthermore deposed, that he well knows that said Francisco and Ramon Roca had a quarrel on board a piragua (a vessel made use of by the Spanish Indians), when they went out to seek for or meet the galleon on their departure from Naparima, and that he the deponent saw an eye-witness of the said quarrel, and that from the consequences thereof Roca bore a grudge or malice against the said negro Francisco; and he declared that this his said deposition is all that he knows, and is all that he can say in reply to the questions that have been put to him, and that the same is the truth on the oath that has been administered to him, and he confirms and ratifies it, and in case of need he will repeat the same afresh; he declared himself to be twenty-five years of age; the aforesaid deposition was then read over to him, and he declared that it was correctly written, that he cannot either add thereto or diminish; he did not sign hereto as he said he could not write, but his honor the said judge signed hereto, together with his counsellor, which I, the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

Done in the presence of me

FRANCISCO DE CASTRO.

Deposition of *Thomas Andrade*.]—Immediately afterwards his honor the said

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judge of the first election ordered that there should personally appear before him, Thomas Andrade, a mariner belonging to the boat in the service of the revenue, for the giving in or making his deposition as solicited by the counsellor for the defence of the criminal Francisco, to whom his honor the said judge, in the presence of me the notary, administered an oath in due form, on God our Lord, and on the Sign of the Cross; who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him, in pursuance whereof there was then read to him the seventh item of the said memorial or interrogatory, and he deposed thereto, that it is true that he, the deponent, went in company with others (whose names are mentioned in the said item) by order of his honor the treasurer, Don Manuel Sorzano, on board the Guarda Costa or coasting vessel, in search of the negro Francisco; that they got on board at the hour of seven o'clock in the morning; and he deposed, that the crew were not at breakfast at that time; that he was twenty-five years of age: this his aforesaid deposition was then read over to him, and he declared that it was correctly written, and that he will at any time repeat it afresh in case of need, the same being the truth on the oath that has been administered to him, he did not sign hereto as he said he could not write, but his honor the said judge and his counsellor signed hereto, which I, the notary, do hereby certify.

LETAMENDI.

Licentiate SAVINON.

Done in the presence of me

FRANCISCO DE CASTRO.

Order or Decree.]—Seen and duly perused the foregoing, and whereas, the counsellor for the defence has departed from this island, but with intention to return by the first opportunity; these proceedings are to be delivered to him on his arrival, and this order or decree must be made known to the said negro, in case he should optionally appoint another counsellor to conduct his defence.

LETAMENDI.

Licentiate SAVINON.

His honor the judge of the first election, thus pronounced and decreed, and he signed hereto with the assent of his counsellor, in this city of Port of Spain, on the twentieth day of January, in the year one thousand seven hundred and ninety one.

Done in the presence of me,

FRANCISCO DE CASTRO.

I, the notary, then went to the royal prison in this city, and on my arrival

there, I notified the foregoing order or decree to the negro Francisco personally, who was duly acquainted therewith, which I, the notary, do hereby certify.

CASTRO.

Legal Step.]—Immediately afterwards, I, the notary, went to the house of his honor the treasurer, Don Manuel Sorzano, and duly made known to him the contents of the memorial, that was presented by the counsellor for the defence of the criminal, as also the order or decree that was pronounced thereon, who in reply declared, that the negro Francisco was actually between nineteen and twenty years of age, whereof I have drawn this legal document; and the said Don Manuel Sorzano signed hereto, together with me the notary, which I certify.

MANUEL SORZANO.
FRANCISCO DE CASTRO.

Another.]—On the eighth day of the month of February, I, the notary, went to the house of the counsellor for the defence of the criminal, Francisco, and delivered to him the proceedings, which I the notary, do hereby certify.

FRANCISCO DE CASTRO.

To his Honor, the Ordinary Judge :

Positive evidence for the Evidence.]—The Counsellor for the defence of the criminal Francisco against whom these criminal proceedings are and have been carried on, under the accusation of his having been guilty of the murder committed on another negro named Andres, declares that these proceedings having been delivered to him for the purpose of stating his arguments and allegations on behalf of the defence, in consequence thereof, as their substance destroy and annihilate the sundry accusations made against his client, he therefore hopes, that your honour will be pleased to acquit him, and order him to be set at liberty. In the first place, the evidence that appears in the summary or first examination is reduced, as deposed to by the witnesses, that Francisco did not sleep on board the Guarda Costa, or coasting-vessel, on the night that the unfortunate affair took place, and that on the day following, the said Francisco was drest in different clothes from those he had gone ashore in. Secondly, that some time previous to the murder being committed, the said Francisco was seen with a knife at the celebration of the waking of a deceased black woman, named Anna Side, where he got into a quarrel with a black woman named Velsi, and that during the said disturbance he had wounded a negro, named Sanson, in the eye. Thirdly, that

the negro women, Sally, Sui and Polly, having departed from the celebration of the waking, to go to their own home, in company with the negro men, Scipio, Ham, and Andres, they heard the latter make an outcry, and that he then fell dead in consequence of the wound he had received, and that at the same time they saw the said Francisco running away by the court-yard of the house of Don Gaspar de la Guardia, where he spoke to two female slaves belonging to the said Don Gaspar. Fourthly, that when the said Francisco saw the revenue boat coming on board the said Guarda Costa, or coasting-vessel, he was heard to say with dismay and trembling, that the said boat was coming in search for him, that his only fears were of his master, and of his being hanged, and that he had met with another misfortune besides this, and finally, that he requested and begged of his shipmates to say that he had slept on board : all which has been positively denied by Francisco; but the counsellor for the defence for a moment, is willing to grant, that the same may be true, and proved beyond any objection to the contrary; yet even in this case, no positive or clear proof can be deduced therefrom that the said Francisco was the perpetrator; neither do the three symptoms that compose the same, fail to leave a doubt in the mind of any well-informed person : and with respect to the first and second points of the accusation, as the quarrel in the house where the waking was celebrated, was not with the deceased Andres, neither had the said Francisco previous to the murder any dispute or quarrel with the said Andres, either by manual strife or by words, the cause or proceedings therefore, are deficient of the original motive for commission of the crime from which the said Francisco was incited to perpetrate it “ *Quia de jure ad conjecturandum quis fuerit delinquens conjecturari debet ex personis ex causis ex pecuniis odio vel inimicitia et similibus.*” Nothing of this nature occurred between Francisco and Andres, consequently there was no antecedent cause for said Francisco to premeditate the murder of the said Andres. As to the third symptom or point of the accusation, as the same proceeds from presumption it is not sufficient, neither is it valid in law “ *sed tantum hominis*” and for this reason very fallible; for the act might have been committed in a different manner, “ *unde si quis visus est effugere à domo vel loco cum ense vel gladio evaginato, et ibi reperiatur aliquis homo occisus, per hoc non poterit condemnari ad mortem, quia fortè alias facit vel fecit*

* Azev. Cons. 30, No. 15,

"ad defensionem suam, vel alio modo et casu inculpabili."* From these presumptions or symptoms, the judge cannot even condemn or pronounce sentence of death, nor even any other corporal punishment whatever. In the example of the wise king Solomon, who, although, from a very presumptive symptom, he judged which was the real mother, and accordingly pronounced his decision that she should have the child, notwithstanding this he did not go so far as to pronounce sentence of death on the other woman, "propter crimen partus suppositii vel filii surrepti."† And as by reason of the slender circumstance or symptom that we have just referred to, and which has no connexion whatever with the quarrel at the house where the celebration of the waking took place (for as is already hereinbefore stated, the said quarrel was not with the deceased Andres) which ought to be considered as a matter of a very different and remote nature, and has no connexion whatever with the murder, and in like manner the circumstance is also foreign and remote, of Francisco having passed the night ashore, and of his not having returned on board till about day-break, and by reason hereof, the points of accusation that can be deduced from these three circumstances destroy themselves, for it is not to be positively inferred that Francisco was the aggressor or perpetrator of the crime from the circumstance of the woman, who deposed to having seen said Francisco run away immediately on Andres falling wounded to the ground, notwithstanding she was nearest to the spot where the crime was committed, it is the more certain, that there is still less cause to infer that said Francisco was the perpetrator, from the evidence of the other two, who were at a greater distance. The third symptom, resulting or arising from the words and circumstances, deposed to by the sailors, that they had observed and remarked, from and in the said Francisco, when the people went on board to take him into custody, is not in the least more conclusive, for the evidence received on these points does not agree, and shall be hereinafter proved to be contradictory, and even were it otherwise, it is not to be wondered at, for under the apprehensions of said Francisco, on his hearing his said shipmates assert, that he, said Francisco, had killed a man, and that the suspicion and accusation of his being guilty of so shocking a crime being general against him, he might from terror confess what he never committed,

for the fear and apprehension of punishment, and of ignominy, may pervert the reason and senses of persons rather too pusillanimous, as is the case with Francisco, especially as with respect to the sanity or constitution of his brain certain symptoms have been discovered. Every violent or vehement impulse of the passions is capable of effecting this injury; and more especially fear and anger, for it sometimes happens, that persons in whom are to be found a lively imagination, but with a weak and abject mind or spirit, who might be meditating with great fear on some atrocious crime, and especially should the people about them, as well as the officers of justice, be making a stir, their brain is apt to be uncommonly disturbed in such a manner, that it receives or imbibes very strange ideas and chimeras. The horror of the crime, and the severity of the punishment so forcibly disturb the animal spirits, inso-much, that the dread of being culpable forces the imagination to apprehend the crime to have been actually committed by them, from deeply reflecting and thinking of it, drives them to conceive it a reality. The strong apprehensions of the nature that might originally be considered as abstracted, stamps the impression so deeply on the mind, and with such strong effect, that then it appears to the party as having actually been perpetrated by the party himself; of this an example is met with in those persons, who being timidly conscientious, imagine themselves at times to have committed those crimes which they hold in the greatest horror, such as execrations, blasphemy, heresies, &c. &c.; the imagination precipitates those persons blindly into dilemmas their fears would otherwise shun, as in the case of one who runs his head into a place, that his feet would otherwise save him from, or like to one who is going on at the edge of a precipice, his anxious efforts to avoid falling so forcibly disturb his mind as to occasion his fall. Furthermore, if nothing even of all this had happened, or been the case with Francisco, the words that are deposed to have been uttered by him are not explicit, but they are equivocal and doubtful, "*et confessio equivoca et dubia non nocet Confitenti et ne noceat sufficit quod non sit omnino clara.*"

Moreover even could the words be ascertained in the manner as the evidence would have them absolutely understood, to relate to the crime of which said Francisco is accused of having committed, they would at the most but amount to an extrajudicial confession which cannot hurt or

* Gomez various vol. 3rd, Chap. 12, No. 25.

† Cap. afferte de Presump.

* Reiffenturel Lib. 2, Decret. tit. 18, § 2 No. 16.

affect him, so far as to be considered as guilty, although said confession was made in the presence of a number of witnesses, provided the judge or notary employed in the cause were not present * to judge of the motive, "*potius tedio vitæ aut ex desperatione quam ex conscientia criminis*;"† and thus it not only fails of being or operating as a proof, but even does not amount to such a shade of supposition of guilt as to authorize the infliction of torture, "*quia confessio incidenter emanata de crimine ad quod non agebatur ad condemnandum non sufficit, imo etiam ad torturam indicium non facit, quando ejusmodi confessio extra judicialis incidenter sed ad ilium finem et effectum emanata fuit*,"‡ and finally, if attention is paid to the denial of Francisco to Ramon Roca, and Josef Antonio Castro, when these witnesses asked him whether he had committed the murder on Andres, there can be no foundation whatever to suppose that he had ever uttered the other words or expressions, confessing himself guilty, or even incidentally; so how could it happen that the said Roca and Castro should be the only persons who deposed to these words or expressions having been uttered by Francisco in reply to the questions they had put to him, it is not probable that he should confess himself guilty at one and the same time, and in the same act of his having immediately previous denied it; and the improbability is more and more increased and evident from the constancy with which the said Francisco has denied the crime during the whole course of the proceedings; neither does the circumstance of his having different clothes on the day following operate as any argument against the said Francisco, because the said following day was Sunday, when all descriptions of people are accustomed to dress and clean themselves, and moreover because the clothes he had on the day before over and above its being the end of the week, the witnesses depose to his said clothes being dirty with mud or clay, and not stained with blood, which might have prejudiced him. The knife neither was any way stained with blood, but was stained with mud or earth, and although the possession or having a knife might be a symptom prejudicial to another, the having this prohibited

weapon about them, yet it does not operate against Francisco, for he being a sailor, and it being permitted to people in his line of life to have and use such in the indispensable and necessary work they have to do on board, it is neither new or extraordinary, but is usual and very frequent the abuse of said permission, by their bringing their knives ashore with them; and no inference can be drawn from this that they absolutely bring them on shore with deliberate intention to commit a murder, but merely some of them from forgetfulness, and the others from knowing it to be tolerated as the general practice. Thus far all the points of accusation are weakened and shook, even were they substantiated without any exception to the contrary. We will now proceed to scrutinize the evidence and exceptions against the witnesses in the summary, or first examination, and it will appear that the same are contrary to law. The evidence on which are founded the first and second indications of guilt is contrary to law, or invalid; for the said depositions, from which such indications arise or result, have been made by slaves; Scipion and Ham, men slaves; Sally, Polly, and Suy, women; this single circumstance is sufficient to cause the said indications to be deemed unworthy of notice, from the said indications resulting from depositions made by them. For, according to the law 13, tit. 16, part 3rd, no slave can be a witness; and in those cases of exceptions where, by this law, they are permitted so to be, they must previously be tortured, by reason of men slaves being men of desperate minds, a disposition they contract from the servitude in which they exist; and every man ought to suspect them of speaking lightly or falsely, and that they will conceal the truth unless some reward is given them. Besides, there are other considerations not less worthy of the attention of the judge, to fully convince him of the little credit due to them. The first is from these five witnesses being slaves of vile and infamous character, it being well and generally known that there is no person whatever so vile as a slave; it is to be added thereto that three of them are women, whose depositions, notwithstanding they perfectly agree, are not sufficient to convict the criminal "*Inferitur proinde quod in criminibus capitalibus et ubi agitur de pœnâ mortis inferenda tres fœminæ testes reum non convincant*."* Secondly, although Polly, Sally and Suy agree perfectly in their evidence with respect to their see-

* Maranta p. 6, pecules aurei tit. de Confessione No. 3, Mascardus concl. 458, No. fo. allegans alios.

† L 1, § Divus, et § si quis ultro ff. de Questionibus.

‡ Tarinacius, lib. 3, quest. 81, No. 219, 228, Mascardus concl. 473, de Probationibus No. 1 et seqq.

* Reiffenturel lib. 2 tit. 20 § 3 No. 87, fanal quest, 59, No. 29.

ing Francisco run away immediately after Andres fell down wounded, still their evidence does not agree with that deposed by Scipio and Ham, who walked after or followed two of the women as deposed to by Sally; the said Scipion and Ham deposed, that they did not see Francisco, but that they were told of Francisco's running away by the last mentioned woman, Suy: it is probable that Suy, who was walking behind all the rest of the company with the deceased, might have seen Francisco; but by no means could the others, who were on before ahead of Scipion and Ham; for how is it possible that Scipion and Ham, who were nearer to the spot where Andres was wounded and fell, should not see Francisco, and that he should be seen by Sally and Polly, who were at a greater distance, with the impediment opposed to their sight of the bodies of said Scipion and Ham, who were following these women on a dark night, as was that on the fifteenth of August, the night the misfortune happened, for there was no moon on that night, neither in any part of the whole world, and whilst the person was exerting his speed to run away, as is natural to be supposed, how difficult it must be for them to know him from seeing his back, even in the middle of the clearest day-light, and it is very natural for persons when occasion or motive exists for running away, that their shoulders are only seen; for these reasons, and in consequence of the aforesaid, they ought not to be believed, and all such witnesses who depose to improbabilities and falsehood, so far from being deserving of any credit, they ought to be punished.* Thirdly, it is more probable that Sally and Polly heard it reported by Suy, in the same way as Scipio and Ham, which may be fully conceived if attention is paid to the circumstances, that until the said Suy cried out to those who were going on before, as she herself has stated in her deposition, in conformity with Scipio and Ham, they never turned their faces round, neither did they come to the place where Suy was crying out, and where the unfortunate Andres lay; and it is to be remembered, that the circumstance of making an outcry or crying out does not infer the distance to be short at which Scipion and Ham were, and consequently the said Sally and Polly were at a greater distance, for had they all of them been near to each other, what occasion had Suy to cry out or exert her voice from any other motive than that her common and moderate tone of voice could

not have been heard by those that had gone on before? Fourthly, that the negro woman Sally, over and above the objections aforesaid, is a very suspicious or questionable witness by reason that it appears from her deposition that she not only voluntarily offered herself as a witness against the said Francisco, but that she also brought forward Sanson, and according to law, "*Si testis sponte se offerat ad testificandum presumitur suspectus*"* and furthermore, because she deposed that they all of them, both the men and women, had seen Francisco running away immediately on Andres falling down wounded, it being false that either Scipio or Ham saw him as declared in their depositions; and because of its being very improbable that she and Polly could have seen him for the reasons herein-before alleged; accordingly she stands sufficiently and fully convicted of falsehood, for the law to adjudge her deposition in all its parts to be absolutely false, "*Quia testis falsus in omnibus presumitur sive prius deponat falsum sive post sive capitula sint separata sive non.*"† And finally because she leads a bad life and is of ill fame, as is deposed to by the witnesses produced on behalf of the defence. Fifthly, by reason that Polly is a witness under age, as it appears by her own deposition, that she is only seventeen years of age. Sixthly, and finally, by reason of Suy being the favourite of the deceased Andres, as is proved by the circumstance of her walking in company with him, separate from all the rest, and behind them all; a partial witness is not to be credited, "*quia omnis qui habet affectionem ad rem non potest pro ea testificari.*"‡ The same objection can be alleged against the negro women Magdalena, Andrea, and Ysavel Urreste alias Pate de Jamon or Pig's Foot, against the two first by reason of their sex, and by reason of their being slaves; and with respect to Madalena, having deposed that Francisco had committed the murder of Andres, she derived it from what she had heard from Andrea, and the latter from Sally, whose testimony is vitiated with so many defects as herein-before pointed out, in consequence whereof, they none of them deserve any credit whatever, although this crime were even one of those that in law are reputed privileged and difficult of proof, "*Quia testis pariens plures defectus nullum fidem facit etiam in delictis difficilis probationis*" and ought not to avail more from being related by

* Matti cont. 40, No. 92; Azev. cons. 90, No. 31 and 32.

* Paz Practice 1 Vol., 1 part, Tiemp. 8, No. 17.

† Azev. Cons. 28, No. 101.

‡ Bart in 1 Deferre ff.

such a one than if reported by the person it was related to; and that her evidence was derived from hearsay with all its defects, is well and sufficiently established.* As to Pate de Jamon, or Pig's foot, likewise from her sex, and furthermore that she could not depose any thing relative to the circumstance from whence is deduced the second symptom of guilt, and as to every thing else she is a very extraordinary witness, and the more especially from her bad character and infamous way of living, which is substantiated and proved by witnesses.

Neither does the evidence stand good in law on which the third symptom is founded; for it is proved in the defence, that the parties were at enmity with Francisco, and that the cause of this grudge or spite arose from Francisco refusing to perform for them those services they wanted to force him to perform, by reason of his being a slave; also that as he was in the low condition of a slave, they would not suffer him to mess with them; these are sufficient grounds to presume that they would be very anxious and desirous to rid themselves of such a companion at any rate; and that this opportunity offering agreeable to their wishes, they have endeavoured to avail themselves of it, to criminate him with those symptoms of guilt in the manner as deposed to by them; for this reason they ought to be considered as enemies, and it is sufficient to prove a cause of their enmity;† and that there be a private grudge, although not fully demonstrated not to give credit to such witnesses.‡ Secondly because Ramon Roca, one of the two witnesses who have accused Francisco of uttering the words on board, has been proved even by the deposition of Josef Antonio Castro, the companion of said Roca, that he, Roca, has qualified the third symptom, and that he had a quarrel with Francisco on board a Piragua, in consequence whereof he bore him ill-will, and it is not absolutely necessary that he should be proved to be his mortal enemy, for, from the mere words of abuse that generally precede and give rise to a quarrel, a mortal enmity is contracted. Thirdly, because the negro Ignacio is a slave newly imported, and very ignorant in the Spanish language, an infidel, and guilty of falsehood in his own deposition, for it is only he who says that the knife was stained with blood, and that the said Francisco threw it into the sea, when at the same time, the other witnesses deposed to its being stained with coloured earth or clay,

of which colour is the water in this port, produced from rain, from its being the colour of the soil or earth in many places; and it appeared and is proved, by the deposition of Matheo the sailor, at folio forty-one, that it was him that had found the knife, and that had thrown it into the sea. The sole circumstance of Ygnacio being an infidel disqualifies him from being a witness against Francisco, or against any other person of our religion, for the law 8, title 16, part 3rd, enacts, "That no man of another religion, such as a Jew, Mahometan, or Heretic, can appear as a witness against a Christian;"—and the more so for the other motives as forcible as this. And fourthly, because the mariner Matheo, first observing and premising that he but little understands Spanish, is a newly converted Indian; and it is well-known that six persons of this description, though agreeing in their evidence are not entitled to more credit than the evidence that might be given by a single witness; * in consequence of the very frequent examples they have given of their being so addicted to falsehood, and of their readiness to perjure themselves, and it is their general custom to answer in the way they may think or know to be the wish of the judge. That this may not be thought to be any exaggeration of the counsellor for the defence, he now copies an instance word for word of such their propensity in manner as follows:—

"The ecclesiastical court being tired
"of the continual accusations and complaints of the Indians of a district,
"against their curate, refrained from instituting any judicial inquiry or proceeding for the reasons before-mentioned; but for the purpose of putting an end to their troublesome and tiresome solicitations, the court finally resolved
"to grant a commission, inserting therein an interrogatory comprising articles
"that tallied with their accusations or complaints, and amongst them the
"court inserted others in every respect irrelevant and absurd; one of
"the said articles or questions was,
"Whether it was true, that on a certain day, and when the curate was concluding the celebration of Mass, that
"king David having appeared with all his pomp and insignia of royalty, the
"curate had killed him, in the sight of
"all his parishioners in the same church.
"And they all of them deposed on oath,
"that he had done it, and that it was
"true, and that they were all of them
"present." What an example! and such as these several others can be pro-

* Azev. cons. 30 No. 24 and 36.

† Thomas Gramm, decis. 33, No. 7.

‡ Farniac quest. 53, No. 52.

* Solorzano Politica Indiana, lib. 2, chap. 28, No. 31.

duced and related. * For the same reason it is provided and ordered by the synodal constitution of the bishopric of Venezuela and Santiago de Leon de Caraccas; † that when any of these Indians are to be admitted as witnesses, they are in the first place not to be sought for, neither are they to be put on their oath by reason of the risk, danger, and probability of their perjuring themselves; and as they are a people who have not a full or proper knowledge of the sacred solemnity of an oath, nor of their obligation to relate the truth, but they are in the habits of saying and answering in the way they may have been instructed and persuaded. From the defects specified that attach to the witnesses, on whose evidence are founded the three symptoms of guilt, it is to be concluded that neither of them is proved conformable to law, for to accomplish the proof of each of them in its respective class or description, two witnesses of full age would be absolutely requisite, who must be unexceptionable and agree in their evidence, which qualities are very far from being possessed by the witnesses of the summary or first examination, as appears in the process, and is alleged in the defence. On the other hand the counselor for the defence has offered to prove in his first memorial, and clearly to demonstrate that his client over and above all the arguments on his behalf was no way liable to the punishment of death, by reason of the wound of Andres not being mortal in its nature, as is unanimously deposed to by four professional men; which said circumstance proves that Andres did not die thereof “nam si
“vulnus non est mortale ex sententiâ
“medicorum et peritorum in arte quo-
“rum dictis standum est et nihilominus
“vulneratus perierit presumitur quod
“non decessit ex vulnere:” ‡ and consequently that although it were proved, that the said Francisco was the perpetrator, he would not be responsible for the murder, but merely for the wound. § More especially he is not liable, for the proceedings manifestly infer that Andres was the aggressor from a variety of motives and conjectures that ought to be attended to, for this point is proved by its not being deposed to or stated by any of the witnesses, || how the rencounter was occasioned, there not

* Parras Regulares de Indis, vol. 2, p. 3, chap. 13, No. 938.

† Lib. 5, tit. 14, No. 107.

‡ Cap. Significat 2, de Homicidio § et quidem.

§ Azev. Com. 30, No. 62, and the following.

|| Math. Controv. 22, No. 3 and 4.

being a single witness that has explained the origin of the disaster, neither do they depose to which of the two gave the first provocation: Firstly, because many authors quoted by senor Mateu, * agree in opinion that it ought to be presumed that the deceased must have been the aggressor. Secondly, because it is manifestly proved in evidence, that Andres was of a quarrelsome disposition and much more robust and ferocious than Francisco; and on the other hand, that said Francisco was of a pacific character and of a good disposition, the presumption of which was the aggressor is against the former, and in favour of the latter, that he was the party that received the provocation. † Thirdly, that so far from Francisco having attempted to run away or to have taken refuge in a sanctuary, although there was plenty of time for him to have done either the one or the other, previous to his delivery up to justice by his master who conducted him from one place to another, both backwards and forwards, loose and at liberty, without fetters nor any hold of him whatever, from one tribunal or court to another, and that said Francisco told his master, that “he himself would voluntarily surrender himself to justice, and submit himself to adjudication and trial, for the accusation against him, of the murder of the said Andres, of which the process or proceedings had been already commenced and instituted;” those circumstances prove a firm and collected mind, as also a clear conscience that he was no way culpable: “Quo qui male agit odit lucem et non
“venit ad lucem ut non arguantur opera
“ejus; qui autem facit veritatem
“venit ad lucem ut manifestentur opera
“ejus;” ‡ and consequently as the presumption is against any one of his being the aggressor, who runs away or takes sanctuary, is it not on the other hand to be presumed that the person who freely and of his own accord personally appears to submit to trial, must be the party aggrieved and injured? § And fourthly, because it is more natural to be supposed, and is more probable that three persons in company would venture to insult one person only, than that one person should venture to insult three, in which situation the said Francisco was, and that he would not dare to provoke or insult Andres who was in company with Scipio and Ham, knowing that the latter two were friends of the said Andres and of one and the same nation of negroes who would unite and join against him

* Math. cod. No. 6 and 20.

† Math. cod. No. 12.

‡ Joann. 3rd chap.

§ Math. cons. 22, No. 18.

the said Francisco, especially as he was alone and without any Spaniard or friend on his side; and this without making any mention of the women who also would range themselves against him the said Francisco, making six persons against one man only: from these four before-mentioned motives, it is inferred by the counsellor for the defence, that if Francisco inflicted the wound on the body of Andres, it must have been done from self-defence, and from having been insulted or injured by the said Andres or by one of the others that were in his company; and if the matter occurred in this way it accounts for his constant denial of the fact, for the story told or evidence of the chief fact that terminated the disaster, is only known from the testimony of five witnesses, who over and above the objections that are herein-before alleged against them, are under the further disadvantage of being English negroes, and that they are from the same country, and were friends of the deceased Andres, and who were all of them in the same predicament and equally and alike implicated, as each of the men had his particular female in company with him, and finally, that they were already in an ill-temper against Francisco, from and after the disturbance that happened at the celebration of the waking, in consequence whereof Scipio and Ham went out provided with a couple of stones in their hands, as is deposed to by Sally, but it is not known how many the deceased Andres had provided himself with, and had thrown at Francisco, to give vent to his quarrelsome disposition and temper, or whether the said Andres had attacked the said Francisco, with any other weapon which his companions might very easily have concealed after they had perceived the said Andres to be wounded, for they were the first persons who knew of the circumstance, and who instead of immediately giving information thereof to justice, that no time might be lost to ascertain the truth of the fact, and with the intent of being excluded from all suspicion of being accessaries or accomplices in the murder, and that the wound might have been attended to by some professional surgeon, they left him exposed to the bad weather, and they became by reason hereof the cause of his death, from the fainting fit occasioned by the loss of blood, as appears by the opinion and report of the surgeons, for they deliberately went home, where they remained till the day following, and the commencement of the process or proceedings was founded on the information given by the officer of the patrol or night-watch, as appears in the said process, and subsequent thereto the afore-

said Sally came forward and offered herself and Sanson as witnesses, at the same time mentioning the names of her other companions, that they also in like manner might be brought forward; and it is not in the least singular or extraordinary that they should proceed in consort, and all of them agree in accusing the said Francisco, and heap upon him all the blame, being morally certain that they could not be contradicted, as there were no other witnesses or persons present but themselves, and also to conceal every circumstance that might prejudice or criminate themselves, for no one is so imprudent as to acknowledge themselves to have been delinquents or aggressors, especially when they know that no person whatever has seen them commit the crime; if the circumstances occurred in the way or manner that the counsellor for the defence is inclined to imagine, from the motives and reasons hereinbefore alleged, the said Francisco did not intend to kill the aggressor, because the wound in itself was not mortal; and also by reason of there being only one wound inflicted (as appears by the dead body), which circumstance excludes such intention, if we attend and refer to the law 3rd tit. 16, part 2nd, which after expressing and stipulating that no punishment whatever can attach to any person who kills another, if the same is done in self-defence, against any attack it states, that at one onset, one wound only may or ought to be given, that it may not appear to be an intention to kill, but merely that the intention is merely self-defence, there being no other remedy: but whether this matter occurred in this way or in any other manner that can be thought of or imagined, it absolutely follows that there is no guilt whatever proved against the said Francisco, and even should any guilt attach to him, still sentence of death ought not to be pronounced against him, but only a lesser or slight punishment: Firstly, because it has been proved that from the certificates or attestations of the notaries public, and by the depositions of sundry witnesses, the said Francisco never has been prosecuted, or any information ever lodged against him for any crime whatever, neither have they ever known him to be guilty of any vice whatever. These circumstances in his favor are held by law, to be sufficient pleas for alleviating or mitigating the punishment of death. * Secondly, in like manner it has been proved that he is an excellent sail-maker, and that any person of useful abilities is not only entitled to a mitigation of the punishment of death, but what is more he

* Azev. Com. 29, No. 24.

cannot be condemned thereto, without consulting or authority from the prince, and it is sufficient that his ability should be respected in the place of the delinquent's abode. * And thirdly, by reason of his being a minor, and under twenty-five years of age, as appears in the process or proceedings, also excuses him from the punishment of death, † for although according to this doctrine the judge is not absolutely obliged or bound to mitigate the punishment, and that it remains at his option; he ought nevertheless to proportion the punishment in conformity to law and equity, for whosoever is invested with power to decree and exercise his judgment, discretion, and conscience ought not by any means to be directed by the impulse of his own will, mind, and opinions, but should guide himself by the letter and spirit of the laws and canons. ‡ For these reasons no judge ought to decide or determine by his caprice or fancy, with respect to evidence being full and legal, if the same is not according to law, neither the heinousness of the crime, nor any inconsiderate zeal or the wish and inclination of appearing and of being deemed and thought severe, ought ever to excite him to overstep the boundaries of law and justice, because no excuse will operate in their favour of their having been instigated by their zeal; furthermore, because the public interest and wish requiring the punishment of a criminal, also requires that an accused person should be acquitted, if proved to be innocent; also, because cruelty ought to be abhorred and mercy embraced; and likewise, because it is far better and more safe to be reprehended for being inclined to mercy than to cruelty: "Quia qui putant misericordiam negandam esse peccantibus et de justitiâ suâ presumant à domino percussi intereunt nec misericordiam cum justitia sustinebunt qui nequent facere misericordiam delinquentibus. § The whole of the aforesaid has appeared to the counsellor for the defence, to operate and redound in favour of his client, and in pursuance of the motives that were alleged by the counsellor of his honor the ordinary judge, inserted at folio one hundred and four, to be excused being further consulted in this cause, repeating and referring in conclusion hereof (*novatione cessante*) to all the most favorable parts of this process, and praying and accordingly prays that the court may be pleased to decide and determine in

* Azev. Com. 29, No. 39.

† Gomez. Var. Res, vol. 3, chap. 1, No. 62 and 63.

‡ Azev. Com. 30, No. 7, and following.

§ Azev. Com. 30, No. 13.

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the manner as solicited in the exordium of this defence:—Dated in the city of Port of Spain, on the thirty-first day of the month of May, in the year one thousand seven hundred and ninety-one.

Licentiate JOAQUIN GUILLEN.

Order or Decree.]—Proceedings to be closed for definitive sentence to be pronounced thereon, for which purpose they must be laid before me.

LETAMENDI.

Licentiate SAVINON.

It was thus pronounced and decreed by his honor of the first election with the assent of his counsellor, who both of them signed thereto, in the city of Port of Spain, on the eighth day of the month of April, in the year one thousand seven hundred and ninety-one, which I, the notary, do hereby certify, in the absence of the original notary,

Done in the presence of me

ANTONIO ARDILA,
Notary Public.

Notification.]—Immediately afterwards I notified the foregoing order or decree, for the counsellor for the defence of the negro Francisco, which I do certify, in the absence of the original notary,

ARDILA.

I then delivered the proceedings into court.

ARDILA.

In the suit or process that has been pending and still pends in this ordinary court, in consequence of the murder committed on a negro slave named Andres, early in the morning of the fifteenth day of the month of August last past, and perpetrated, as has been deposed, by another negro named Francisco, the property of Don Manuel Sorzano, in pursuance of and whereas every thing has been done and executed in this process and nothing left to be done, his honor assented that on consideration of the proceedings and merits resulting therefrom, and circumstantial evidence with the symptoms that augment and establish it to more than semiplenary or half-proved. His honor being pro tribunali secreto, pronounced and decreed that it was his duty to condemn and he accordingly does condemn the aforesaid negro Francisco to be put to the torture, and which shall be put in force in the mode and manner as his royal highness may be pleased to determine, and to whom it is reserved to specify the nature and degree of severity of the said torture, and the order or stated times at which the same is to be inflicted; and the original proceedings are to be delivered into

the royal court of audience of the district for his confirmatory decree or revocation thereof.

MATHIAS DE LETAMENDI.
Licentiate BLAS SAVINON.

The foregoing sentence was pronounced and decreed by his honor Don Mathias de Letamendi y Lisarrarde, lieutenant-colonel of the royal armies and ordinary judge of the first election of this windward island of Trinidad, who thus pronounced and decreed in *audiencia secreta* with the assent of his counsellor; in this city of Port of Spain on the sixth day of the month of June, in the year one thousand seven hundred and ninety-one.

Done in the presence of me

FRANCISCO DE CASTRO.

Royal Notary Public and officially such to the government.

The contents hereof agree with the original which remains among the records of my office, and I sign hereto in this city of Port of Spain in the windward island of Trinidad, on the third day of the month of August in the year one thousand seven hundred and ninety-one.

In testimony of the truth

(Signed) FRANCISCO DE CASTRO.

B.

TRINIDAD.

THE KING,
against

THOMAS PICTON, Esq.

This is the copy of the proceedings or exhibit contained in one hundred and sixty leaves to which the examination of Francisco de Castro, taken before me, doth refer.

(Signed) T. HISLOP, Govr.

In the Year 1792.

Criminal Suit or Proceedings officially prosecuted by the Royal Court of Justice, against the negro Francisco the slave of Don Manuel Sorzano.

Judge,

His Honor the Judge of the First Election.

Notary,

Don Francisco de Castro.

Port of Spain on the fourth day of May 1792.

The alguazil mayor or sheriff of this island, hereby acquaints his honor the judge of the first election, that during the night of yesterday, he was informed by the jailor or keeper of the prison, that the criminal Francisco, the negro slave of Don Manuel Sorzano, had made his escape from the prison of this city, and

that the sentinel called Juan Inglez or John the Englishman, had gone off with him, notwithstanding the said criminal was well secured with a pair of irons and fastened to the bar.

(Signed) BARTHEL. PORTEL.

Having duly considered the foregoing intimation his honor the said judge in consequence thereof, directed the said communication to be annexed to the proceedings, and that the prison under the care of the jailor Gor be visited, and of the circumstances aforesaid that a formal report thereof be made to his excellency the governor and captain-general; in accomplishment whereof all the usual and requisite ceremonies must be observed that are conducive to the right administration of justice, and subsequently that the said jailor or prison keeper, and the soldiers on guard be arrested, who had the care thereof on the third day of the present month, until every legal enquiry and examination shall have taken place with respect to the said event, and which said enquiry and examination shall be entered into the moment his excellency may so determine.

(Signed) LETAMENDI.
Licentiate SAVINON.

His honor, the said judge of the first election of this island of Trinidad, thus pronounced and decreed and signed thereto with the assent of his counsellor, in this city of Port of Spain, on the fifteenth day of the month of May, in the year one thousand seven hundred and ninety-two.

Done in the presence of me

(Signed) FRANCISCO DE CASTRO.

In pursuance of the foregoing order or decree, I the Notary, proceeded and went to the palace of his excellency the governor and captain-general, and previously observing the usual forms and ceremonies, I delivered into the hands of his said excellency this process and decree thereon pronounced by his honor the said judge of the first election; and his excellency being duly acquainted with the contents thereof, he replied, that from the moment the criminal Francisco had escaped from the prison, the jailor, as also the soldiers that were on guard were all of them in custody, and that their examination was commenced; and that should his honor, the said judge of the first election, require a copy of the said examination, the same should be furnished him in due course, and of the whole of the aforesaid his excellency ordered this document to be drawn thereof, and that the same should be notified to his honor, the said judge, previously practising and observing the usual

forms and solemnities; and his excellency signed hereto, in this city of Port of Spain, on the sixteenth day of the month of May, in the year one thousand seven hundred and ninety-two, which I the notary, do hereby certify,

(Signed) CHACON.

Done in the presence of me

FRANCISCO DE CASTRO.

First practising and observing the usual forms and ceremonies, I the notary, delivered this process into the hands of his honor, the judge of the first election, which I the notary, do hereby certify.

(Signed)

CASTRO.

I, the undersigned notary, do hereby certify, that in pursuance of the aforegoing order or decree, the jailor or prison-keeper named _____ took and received in his custody the former jailor or prison-keeper named Antonio Gor, and whom he has secured by both feet and with a pair of irons locked or bolted; in testimony whereof I have drawn these presents, and have signed the same, on this sixteenth day of May, in the year one thousand seven hundred and ninety-two.

(Signed)

FRANCISCO DE CASTRO.

In this city of port of Spain, on the nineteenth day of the said month and year, his honor, the judge of the first election, proceeded and went to the prison for the purpose of examining the jailor named Antonio Gor, to whom his honor the said judge, by means of an interpreter and in the presence of me the notary, administered an oath on God our Lord and on the Sign of the Cross, and who thereon promised to relate the truth of all whatever he might know, in reply to all such questions that might be put to him, in pursuance whereof the following questions were put to him:—

On his being questioned how he came to suffer the criminal named Francisco to escape on the night of the third of the present month, without having the fear of God before his eyes, and total disregard of justice that had confided to him the keys and custody of all the prisoners in this royal prison, he replied, that at

twelve o'clock at night of the said third of the present month, he the deponent, in the execution of his duty, accompanied by the sentinel who entered on duty at that hour, whose name he is ignorant of, made a formal search and duly examined the state of all the prisoners that were at that time in his custody, when he found all the padlocks of the stocks and bar in which they were secured and bolted, and also the bolts of those that were in irons every way secure and nothing wrong; that at one o'clock in the said night, he, the deponent, being asleep in his own room, the serjeant who had the command of the guard, but whose name he is ignorant of, came and acquainted him that the criminal Francisco, the slave belonging to Don Manuel Sorzano, had made his escape and had carried off his irons with him with which he had been secured, having broke the padlock of the bar, and accordingly that the said Francisco was not to be found, the said padlock was broke and that the sentinel had also gone off with him, leaving his musket at the door or gate of the prison; that the whole hereof he made known to the sheriff the day following, having previously fixed another new padlock on the said bar, there being five other prisoners fastened thereto; and that in consequence of the aforesaid, he, the deponent, declared that he was not blameable, and of course not deserving of the severe imprisonment he was then suffering; and he prayed and solicited his honor the said judge, then actually present, to consider and pronounce him innocent, and he deposed that the aforesaid is all that he knows, and is all that he has to say with respect to the matter in question; and that the same is the truth on the oath that has been administered to him; and that he is thirty-five years of age; this his deposition was then read over to him, and he deposed that it was correctly written; and he signed hereto with his honor the said judge, and also the interpreter, which I the notary, do hereby certify.

(Signed)

LETAMENDI,

(Signed)

ANTONIO GOR.

Done in the presence of me,

(Signed) FRANCISCO DE CASTRO.

Court of King's Bench, Thursday, November 19: 48 GEO. III. A. D. 1807.

Mr. Dallas.—In the case of the King v. General Picton I humbly move your lordships that the rule for a new trial be made absolute.

Lord Ellenborough.—We cannot proceed far in this case to-day, as I am obliged to go

to Guildhall at one o'clock; we will however hear Mr. Garrow.

Mr. Garrow.—My lords, it may, perhaps, be convenient that I should state to the court, the order in which these proceedings have

taken place, as we do not understand it alike. I shall take the liberty of bringing to the recollection of the court, what the course of proceeding has been up to the present moment. Your lordships may remember that my friend Mr. Dallas applied for a new trial, founding his application partly upon a representation that the evidence which we adduced in reply was a mis-statement of facts, and mainly on the suggestion that the defendant had, subsequently to the trial, discovered some new evidence which was fit to be laid before a jury; whereupon the Court was pleased to grant my learned friend a rule to show cause why there should not be a new trial; and of course, it became my duty on a subsequent day to shew cause; an application was then made to lay before the Court, certain new documents on the part of the defendant; it appeared to me to be my duty to submit to the Court whether they could receive the evidence which those documents contained, in the shape in which it was prepared to be presented, and your lordships were of opinion that you could not. It was then suggested that it would be fit that the court should be possessed of those facts, if they were in a state to be read; and I instantly consented to a mandamus for the production of that evidence. Mr. Dallas has not yet opened that evidence; he has not stated the arguments of which he means to avail himself; and when I some days ago represented that it would be convenient that those particular passages on which he meant to rely should be pointed out by him, the answer of my learned friend was, that he relied on all and every part of the depositions. I therefore submit to the Court, that as I am to answer Mr. Dallas, and as he has not yet stated the grounds on which he means to rely, it is right that Mr. Dallas should begin. He understands—

Mr. Justice *Le Blanc*.—You shew cause against this rule?

Mr. *Garrow*.—I have no wish about it: whatever may have been supposed, or whatever may have been said to the contrary, I have in no stage of this cause had any other wish than that justice might be done.

Mr. Justice *Le Blanc*.—I take it to be the rule that you should begin.

Mr. *Garrow*.—But I might occupy the time of the Court by arguing against conclusions being drawn from some of these documents, which conclusions Mr. Dallas might never wish to induce the court to draw from them. I have never heard in what way this evidence is meant to be urged on behalf of general Picton.

Lord *Ellenborough*.—If Mr. Dallas had, at the time when he moved for a new trial, been in possession of this new evidence he would then have laid it before the Court with his observations upon it. That being the

case, you should, before shewing cause, have the benefit of being apprized of the way in which he means to apply that evidence, *nunc pro tunc*; you will then shew cause, and Mr. Dallas will afterwards have an opportunity of supporting his rule.

Mr. *Garrow*.—That is exactly the way in which it struck me.

Mr. *Dallas*.—My lords, the only way in which I mean to apply the depositions that have been returned under the Mandamus has been already stated. With a view that the case might be thoroughly considered and understood, I certainly did originally give directions that they should be furnished with copies of the evidence before the rule came on. It is perfectly true, that on Mr. *Garrow*'s asking on what parts of the evidence I meant to rely, I replied, on all the evidence; which I undoubtedly do, as applicable to one single point, namely, what was the law of the island of Trinidad at the time of its cession to the British government. That is in fact the point on which the whole case turns, and I mean to apply the whole evidence to that point, and to contend that by the law of Spain, with respect to torture, which law prevailed in the island of Trinidad at the time of its cession to Great Britain, the application of torture was properly resorted to in the case of Luisa Calderon. That is the way in which I mean to apply this evidence.

Mr. *Garrow*.—I am perfectly satisfied. The Court has done me honour in approving what I suggested, and my learned friend has explained the way in which he means to apply the evidence. I was only anxious to know that I should not be fighting the air.

Lord *Ellenborough*.—Mr. *Garrow*, you will please to begin.

Mr. *Garrow*.—Now, my lord?

Lord *Ellenborough*.—Yes; we have still some little time.

Mr. *Garrow*.—My lords, there were several grounds taken by Mr. Dallas, independent of those which he took before, and which I shall touch upon very slightly, because the principal point is this—Whether, if these documents had been laid before the jury in the shape in which they are now presented, they would have given a verdict contrary to that which has been given. I shall just mention the other points, and to which your lordship has given an answer. It is said, there is no evidence of express malice; my learned friend, I believe is not one of those who are disposed to misrepresent the conduct of those of the same profession. I believe he did me the justice to say, that in stating the case I never insinuated any *express malice* on the part of general Picton. But I submit, if his acts were illegal, if by the law he was not authorized to put Luisa Calderon to the torture, then this act was malicious. The verdict of the jury shews that the act was illegal.

and malice is necessarily implied from its illegality.

It is said (which I shall come to by-and-by) that this mode of proceeding was justified by the law of Spain, as applicable to the Spanish colonies, and by his majesty's proclamation;—that by the proclamation of sir Ralph Abercrombie, the law of Spain was to continue till his majesty's pleasure should be known, that before that time the torture had been inflicted, and therefore governor Picton was justified by that law.

But, it is said, supposing that not to be so, and that the law of Spain did not justify the infliction of torture, this was a mere error in judgment; and as he was acting in the character of a judge, he is not criminally responsible for errors in judgment. Now, without attempting to dispute, whether a judge acting within his jurisdiction, is criminally responsible for the errors he may commit, and which all persons are liable to commit; from the return to the mandamus, it is quite impossible to consider general Picton as having acted in the character of a judge. On referring to the return to the mandamus it will be found, that proceedings were taken before certain officers, or more properly magistrates, for I have no knowledge and I never have affected to have any of the Spanish law, but I believe that there are certain magistrates who have a jurisdiction to enter upon preliminary inquiries very much like our justices of the peace; that I do not mean at all to deny. But I think it appears upon the evidence that the governor had a similar jurisdiction; and on the complaint being made, if governor Picton had thought fit to take cognizance of it himself, he might have called before him the suspected persons, have examined witnesses, and have done every thing that these magistrates did on the subject. He might have acted in the character of a justice of the peace, but he did not take that course, he took that which was better, more natural, and more dignified; because, having in himself the appellate jurisdiction, it would have been an improper thing for him to have put himself in the place of the inferior magistrate; he took the more dignified course, and determined that the inquiry should first be carried on before an ordinary magistrate. He expressly delegated this inquiry to the inferior magistrate; it never came before him for judgment; and it is one of our great complaints against him, that he did not keep to himself entire that appellate jurisdiction for correction of the errors of the inferior magistrate. If the magistrates below had ordered the torture to be inflicted, it is clear that the person on whom it was ordered to be inflicted had a right to appeal against that judgment. Under the Spanish government he had a right to appeal to the audience of Caraccas, and unless that audience had by its authority confirmed that judgment, the torture could not be inflicted at all.

Now, what I complain of (and which de-

monstrates that he has no protection in the character of judge), is, that he interposed, in the character of governor, to do that which the magistrate below durst not do of his own authority;—on the magistrate below suggesting that it might be proper to inflict the torture, he (governor Picton) wrote that sentence of which I certainly must always speak (whatever other people may think of it) with that abhorrence which I have always felt—“*Inflict the torture on Luisa Calderon.*” You find in that code of laws for the government of Trinidad, and which are stated to have prevailed at the time of its surrender, that the persons to be present must be, the judge, the executioner, and the escrivano; all other persons were to be excluded from hearing what passed. And, my lords, it could not possibly have happened, that this unfortunate girl should have been suffered to be put to the torture if governor Picton had been present; and if he had been acting as judge, it would be too degrading to say, that a British governor could have been present at that scene, and have permitted it to go on. This shows that he has no excuse in the character of a judge.

Then, my lords, it is stated that by the law of Spain, torture may be inflicted on a certain class of criminals; and I admit that it applies to certain persons suspected of being participators in crimes, and who will not confess the truth without torture. But I submit that this is not shown to have been the law of Trinidad. My learned friends have produced a certain number of law-books which nobody can imagine were general Picton's rules of government, because it was a subject of lamentation, that he had no books to consult; and how was he to know this law? My learned friends, however, say that these books containing that law were to regulate the conduct of general Picton; and they state that the torture was applicable to certain persons, more especially criminals. But it is curious, that as there were various modes of inflicting torture in order to obtain the truth, so there were certain persons to whom it could not be applied; minors are in this class, and I apprehend you will find that Luisa Calderon was upon that ground intitled to an exemption from the infliction. There was another protection to which she was intitled by that law, namely, a defender; but she had none. If therefore, that law had been observed, governor Picton never could have issued the order for putting her to the torture and she would have had a defender. Giving her a defender in that stage of the cause in which one was assigned, was a mere mockery, as she had not a defender at that stage in which she was intitled by the law of Spain to have one.

But, I submit to your lordships, that they have not made out this to have been the law of Trinidad at any time. These gentlemen, upon several of whom I do not make any com-

ments, have sworn that the books which they have enumerated were books of authority according to which the Spanish law was administered, and according to which torture might be inflicted in certain circumstances. My lords, what more could that prove than that at some time or other such might be the law? I have now before me the first copy of Blackstone's Commentaries I ever read, and here we have the law respecting *Witchcraft, Gypsies, and Bastards*; here we have the old law on these subjects, but what is there laid down is by no means the law of a later and more enlightened period; the errors of former times on these and many other subjects have been corrected. But I will give up this part of the argument, and suppose that these books contain the clear undoubted law of the island of Trinidad, that he who runs may read; and that torture, in the judgment of the persons who take upon themselves to answer with regard to it, may be inflicted in such cases by the law of Trinidad; I will suppose that these books contain the plainest texts in favour of the infliction of torture, and that they bring it down to the hour of the surrender of the island, still I say, that it is not the law of the island of Trinidad, and that there is no man who has sworn he has known any such thing. I say, no man ever heard of the infliction of torture in Trinidad until Luisa Calderon had the torture administered to her by the order of general Picton. I say more, I say it appears upon the evidence that when the first order was given, it became necessary to find out the means by which it could be carried into execution; and you will find that this was proved by the gaoler who was present at the infliction of this torture. It is clear there were no means of inflicting torture till Luisa Calderon was sentenced to have the torture inflicted upon her; and then in resemblance of that which had been used in the barrack-yard, the piquet or something like it was for the first time erected in one of the rooms in which she was confined.

But, my lords, it is stated, that there is a case which will bear out this, and which proves torture to be the law of Trinidad. It appears to me, however, to be a most unfortunate instance for proving that fact; because, if any conclusion is to be drawn from it, it will be found that so far from confirming the propriety of the conduct of general Picton, it has the contrary tendency. It is the case of a man who was suspected of assassination, and it appears that an order was made that torture should be inflicted on him. He had an opportunity of doing what Luisa Calderon had not an opportunity of doing; because at that time, under the Spanish government, there was an appellate jurisdiction vested in the audience of Caraccas, which was at a distance and did not interfere in the first instance. They did not write an order for the infliction of the torture; but, when the torture was

ordered to be inflicted by the inferior magistrate, the person on whom it was ordered to be inflicted said—"You cannot inflict torture on me; you cannot do it; I appeal to the Audience of Caraccas." That appeal was laid and it appears that the proceedings were forwarded.

My lords, it is a curious thing to observe that those who the first time were examined on the part of governor Picton do not appear to have known of this case. A learned gentleman who was examined on this trial, Mr. Gloster the attorney-general of the island of Trinidad, does not appear to have even heard of this case. We never came to the knowledge of this case until the governor and council of Trinidad thought it necessary to institute an inquiry. And the account given of this record, which is in the custody of an officer who was examined under the *first Mandamus*, is this:—Not that they have the original record remaining, but what they take to be a transcript of the original record which went to the Audience of Caraccas. Now, this I apprehend to be a proceeding hardly ever heard of before. I apprehend that every court retains possession of all its original records and transmits only copies; I submit therefore, that this document comes here under very extraordinary circumstances. But it does not shew that the law of torture was ever acted upon. The account we have is, that the Audience of Caraccas confirmed the order, and that it was returned back; and what happened? That the assassin was tortured? No; but that he escaped and carried off his guard with him. This is the only solitary instance of any person, from the beginning of the world, having been condemned to suffer torture in Trinidad.

But, my lords, I will suppose, that in all that I have humbly stated to the Court I have been mistaken, and that at the time when governor Picton took possession of that island a Spanish governor might have inflicted the torture; with great humility, but with great confidence, I take the liberty of stating that the very instant the British flag was displayed at Trinidad, from that moment the possibility of inflicting torture absolutely ceased. I mean to lay it down and to insist that the infliction of torture is so absolutely abhorrent, so utterly detestable to all British feelings, that no British governor has power to inflict it. I go further; I will not say the legislature could not pass a law to authorize him to inflict torture, inasmuch as we are told that parliament is omnipotent; but I take the liberty to say not only that governor Picton had no authority founded on any precedent or instance of torture ever inflicted on any subject in the island—he had no authority from that source—but I go further, and say, that by the law of England his majesty could not have deputed such an authority to him. In some parts of the British dominions slavery exists, but the moment a

slave sets his foot in this country he is free; and it is impossible that any British governor can, of his own authority, or from any authority that can be delegated to him by his sovereign, inflict torture on any subject in any of the British dominions.

My lords, this is a question of extreme importance, although the present is not a time for arguing it at any length. Even if every species of torture had existed under the Spanish government (though I think we have proved the contrary), I submit that under the circumstances in which he was placed, governor Picton had no authority whatever to inflict it, and that no kind of torture can exist for one moment in any quarter of the globe under a British government. I will not argue at any greater length the great question whether your lordships will grant a new trial. I submit that no case has been made out for it.

Lord *Ellenborough*.—I must go to Guildhall, and therefore we shall not proceed further in this case at present.

COURT OF KING'S BENCH.

The King

versus

PICTON.

23rd November, 1807.

Mr. *Nolan*.—My lords, I am to show cause before your lordships why a new trial should not be had in this case, and to support the verdict by which the defendant general Picton has been found guilty. With regard to the first point taken by Mr. Dallas when he moved for this rule, namely, that it was necessary to prove against the defendant *actual malice* I shall give your lordships but very little trouble. In addition to the reasons which upon a former day were urged by Mr. Garrow, to show that it is unnecessary, and in most cases impossible, to prove actual malice, I have only to cite to your lordships the case of the King and Woodfall, 5 Burr. 2666—a case which underwent great consideration, and which occupied much of the public attention at the time; and it is there laid down by lord Mansfield, “That all epithets in the information are *formal inferences of law* from the printing and publishing. That no proof of express malice ever was required, and in most cases is impossible to be given. That the verdict finds only what the *law infers* from the fact. Therefore, *after* conviction, a defendant may, by affidavit, lessen the *degree* of his guilt.—That where an act, in itself indifferent, if done with a particular intent, becomes criminal,—there the intent must be proved and found: But, where the act is in itself *unlawful* (as in this case) the proof of justification or excuse lies on the defendant; and in failure thereof the law implies a criminal intent.”

My lords, there is another case which I shall take the liberty of citing, because, being equally conclusive in its principle, it seems more apposite in its facts to that now before you. It is laid down by lord Coke, in 3 Inst. page 52,—“If a lieutenant, or other that hath commission of martial authority, in time of peace, hang, or otherwise execute, any man, by colour of martial law, this is murder; for this is against Magna Charta, cap. 29, and is done by such power and strength as the party cannot defend himself.” The learned judge goes on to observe, “and here the law implieth malice;”—or in other words, the law infers that the act, if illegally done, is maliciously done. This case, my lords, is cited with approbation by lord Hale in his *Historia Placitorum Coronæ*. Vol. 1, p. 500.

Leaving this point to rest on the authority of these cases, beyond the possibility of being shaken, I come to the next objection, which has been taken on the part of the defendant.

The point put by Mr. Dallas at the trial, and which has been fairly and properly argued by him now, is this;—Whether, by the law of Trinidad, as it stood at the time when that island was ceded to the British arms, torture could, under all the circumstances of this case, be applied to the unfortunate girl upon whom it was inflicted. I shall humbly contend that it could not. In discussing this point, I shall examine the evidence which has been returned to the Court under the last mandamus, as well as that which was taken down by that chief justice at the trial. The evidence that has come over under the second mandamus, is of two kinds. I shall take the liberty of making some remarks upon both.

The first is the evidence of several persons who profess themselves to be acquainted with the laws of the island of Trinidad, and who state—but state only in general terms—that by the law of that island, torture might be applied previous to the year 1801 either to a principal or to a witness in criminal cases. One gentleman who has given evidence, has deposed, that the cases in which torture can be applied are minutely detailed in the Law of the Partidas, and in the Bobadillia. But the cases, which are said to be minutely stated in these books, are not laid before you: nor has my learned friend, Mr. Dallas, shown in what part or page of the books cases can be found which resemble in material respects that which is now before the court.

My lords, my objection to this evidence which is offered on the part of general Picton is, that it by no means proves, that by the laws of Trinidad, as they existed in 1801, torture could be applied in a case circumstanced as this particular case is. It appears by the evidence of De Castro, that the girl was not only intitled to, but ought to have had a curator or a defensor appointed to defend her.

Mr. *J. Lawrence*.—By what evidence does that appear?

Mr. Nolan.—It appears by the defendant's evidence. It appears by the evidence of De Castro, who was examined under the first mandamus. It is clearly proved by all the evidence that she was under the age of twenty-five, and it is stated by De Castro—

Lord Ellenborough.—She says she was between thirteen and fourteen.

Mr. Dallas.—Evidence of her age was given under the first mandamus, and that she was under the age of fourteen, but no evidence of that was given at the trial.

Lord Ellenborough.—Evidence of that was given by herself,* very early in her examination.

Mr. Garrow.—There is the fact of her age, and Mr. Nolan is now arguing on the effect of that fact.

Mr. Lawes.—That fact was abandoned.

Mr. Garrow.—I am astonished to hear it said it was abandoned. It did not come in question, because the jury were of opinion that the Spanish law was not introduced into the island.

Lord Ellenborough.—The question as to her age would have arisen, if it had been established that the Spanish law was the law of the island of Trinidad.

Mr. Nolan.—It appears by the evidence, that this girl was under the age of fourteen at the time the torture was applied. If she was under that age she was not liable to have the torture inflicted upon her at all, under any colour or pretence whatever. But a farther circumstance to which I wish to direct the attention of the court is this. It appears from all the defendant's evidence, and particularly from that of De Castro, that as she was under the age of twenty-five she was entitled to have a person to appear for her, and to conduct her defence. The farther objection, therefore, which I now take upon the evidence as it stands admitted upon all sides is, That it appears by these proceedings, as well as in those against Gonzales, who is charged as the principal in the felony, and whose case is also before the court, that Luisa Calderon was a free person under the age of twenty-five, and that no defensor was appointed for her. My lords, it was not till long after the infliction of the torture, and after Begorrat's having quitted the office of alcalde, when the cause came under the cognizance of another man, that a guardian or defensor was appointed for her.

The next objection which I shall state has not been hitherto noticed, namely, that it is manifest that torture was not applied for that purpose for which only by the law of Spain it could be applied. It appears from the evidence returned under the Mandamus that the sole purpose for which torture could be applied by that law was, to extract the truth of the facts of the case, or in other words to

ascertain whether the party was guilty or not. But here it is manifest from the evidence, and particularly from the testimony of Begorrat, the alcalde, that torture was not applied the second time to obtain the truth, but for the purposes of discovering where the money was. The question, as it appears by the record itself, is not to hunt out the guilt or innocence of the party, but merely to extort from this girl where the dollars were that they might be recovered.

My lords, it is at least a singular thing that the unfortunate child, who was examined as a witness should have had the torture applied to her; and that the person who stood charged as *the principal* should not have the torture inflicted on him, although he acknowledged nothing. To him the torture was not applied.

Another objection that I take is, that it appears by the testimony of De Castro, and by other evidence, that this girl was entitled to an appeal, but the conduct of general Picton deprived her of the means of appealing. He was the person to be appealed to, he himself being judge in the last resort. If there was to be any appeal, therefore, it must be made to him. But by taking on himself to give the order to inflict the torture on her while the original cause was in the court of the alcalde, he deprived the unfortunate girl of the only means which she had of having her cause in this respect reconsidered by that tribunal by which by the laws of the country as they are supposed to have then stood (I mean the laws of Spain) it could have been done, and by which the Court have power to repeal a sentence so unjust and cruel. For your lordships see, that even supposing that by the law of Spain, torture can be inflicted, it is not to be applied without consideration. It is not to be resorted to without great deliberation, without the necessity for its application being sifted before various Courts, and many opportunities given for the interposition of reason and mercy. There was first an appeal to the audience of Caraccas, and ultimately there was an appeal to the king in council at Madrid. But the defendant by taking upon himself to order the torture and thus becoming judge in the first instance took away from her that appeal, which by the law of Spain she might otherwise have had.

A further objection to general Picton's conduct is, that supposing he could be justified in the inflicting torture in any case, still as he was not a judge of a court of record he was bound to show that the forms of the Spanish law had been strictly complied with, in order to warrant what has been done. But I apprehend it appears from the books cited by my friends themselves that when the torture was ordered to be inflicted, time ought to have been allowed for the opportunity to appeal. But here there was no such time given her. The original proceeding was a summary mode of process adopted by the alcalde, and sanc-

* Vide p. 461.

tioned by the defendant as governor, not for the purpose of extracting the truth, but for the purpose of recovering back the money, if it could be got at.

Another ground upon which I state that the defendant has not advanced a step towards proving his justification by this new evidence is, that the torture applied to this unfortunate girl was a new species of torture, and not one of those recognised by the law of Spain. No power to inflict a new species of torture existed under the old Spanish law. That this was a new species of torture appears by all the evidence given at the trial. There was no instrument of torture at that time in the island. The picket, if this horrid instrument may be so called, was erected by general Picton himself: it was his own invention: and, therefore, the species and instrument of torture which was applied, was not such as the law of Spain would have justified—supposing the law of Spain to have been the law of Trinidad in 1801. It certainly is not justified by the extracts produced from certain books as quoted by the learned gentlemen on the other side. And no other extracts have been produced before the Court, either on the trial or in support of this motion, which now seeks to send the case before another jury.

The first extract cited at the trial, is taken from the *Curia Philippica*, in page 230, and runs thus.—“The species of torment that is to be inflicted is from its nature contingent and not determined by the law. And it is to be according to the temperament of the delinquent, the crime and presumption; *although new torments are not to be adopted, but only the usual ones. The customary ones are water, small cords, a hook or pulley agreeably to the Leigs de las Partidas.*”

As far as it is possible to understand this quotation, it appears that the party was bound to have used the old forms of torture, supposing he could have used any at all.

I trouble the Court with the next quotation for the purpose of shewing that particular forms were given, according to which the infliction of torture was to be adjudged, and that it could only be decreed pursuant to those forms.

It is an extract cited from the *Elizondo* by the gentlemen, it is in the form of a petition, and requests that torture may be inflicted on the culprit in the default of proof.

Lord *Ellenborough*.—From what do you cite that?

Mr. *Nolan*.—From the *Elizondo Practica Universal*, p. 273. It was given in evidence at the trial, by Mr. Dallas, and is in the short-hand notes.†

Mr. Justice *Lawrence*.—It is not in the return to the *Mandamus*.

Mr. *Nolan*.—No, my lord.

* See the same passage cited in different terms, by Mr. Dallas, *antè* p. 486.

† *Vide antè* p. 514.

Lord *Ellenborough*.—“It is the part of the professional lawyer, to determine the appearances which are sufficient to authorize torment. But the question cannot be ordered by the ordinary judge without consulting the superior tribunal.”*

I have not put down for the defendant any evidence from this book, except what I have now read.

Mr. *Garrow*.—My lord, I rather think it was the last thing that was read from that book, on the part of the defendant. The interpreter was ill, and went out of court.

Mr. Just. *Lawrence*.—“It is the part of the professional or graduated lawyer to determine the appearances, which are sufficient to authorize torment. But torture cannot be ordered by the ordinary judge, without consulting the superior tribunal.”

Mr. *Nolan*.—It is after that. It is in the form of a petition on the part of the prosecutor, requesting torture to be inflicted on the ground of defective proof.

My lords, the objection I make is this—that the proceedings on the trial of Carlos Gonzalez, and of this girl Luisa Calderon, being given in evidence by Mr. Dallas, it does not appear that the form which is required by the law of Spain, as that law is proved by the defendant himself, has been complied with; but, on the contrary, it appears that it was not resorted to. The defendant has taken upon himself to prove that he was justified in what he has done by the laws of Spain, supposing them to have existed in the island of Trinidad at the time of the conquest, and that torture could have been legally inflicted there in any case or under any circumstances whatsoever. But the evidence they produced at the trial, and the evidence they have obtained on the return of the second *Mandamus* does not at all justify the defendant; because it does not show that under the circumstances of this case torture could have been inflicted in the manner in which it has been inflicted here.

It is one question therefore, whether, even supposing the law of Spain to be as it is laid down in the *Partidas* and *Bobadilia*, it has been accurately observed and followed in its forms; it is another question, whether it is proved that the law of Spain justifying torture, was in force in Trinidad at the period of the conquest of that island by the British forces. The gentlemen who have given evidence under the second *Mandamus*, have only spoken to the law as it is to be collected from the books to which I have alluded,—I except what is denominated a record, on which I shall make some observations hereafter,—not one of them has stated that he ever knew *an instance* in which torture was applied. They allude merely to books, and to different editions of those books, in which the law is

* *Vide antè* p. 513.

so laid down: but as to examples of that law having been put in force, none of them state any; and although it is true, that in some of the affidavits reference is made to later editions of these books, and although the law may have been as it is laid down in these books when they were first composed; yet some of them were written above a century ago, and it does not appear that the law has continued uniformly the same, without alteration, from their original publication down to the present time. There is no person upon whom is cast the duty of expunging from ancient authors misconceived opinions, or obsolete doctrines, which have been over-ruled or exploded subsequent to the time when the author gave his work to the world. A record however is produced, or rather what is stated to be a record, and it is verified upon the oath of a person of the name of De Castro. The circumstances under which it is stated to originate are these.—A negro of the name of Francisco, in the year 1791, having stabbed a fellow-slave, was committed to prison. The judge had thought it a case in which it was proper to inflict the torture, and the criminal appealed from that sentence. In consequence of this appeal an account of the proceedings was transmitted to the royal audience of Caraccas. I understand the record to have been transmitted to this court of appeal, but that it never came back again, for it is not produced, and there is no account of it, excepting that which you will consider as no evidence at all—namely, that the witness De Castro had *heard from the judge* that it had been returned. If the record, or even a copy of it, had come back to the judge, would it not have been found in the office of this gentleman, who was the keeper of such records? There is nothing, therefore, but the hearsay of what the judge is supposed to have said, by which this man attempts to prove the fact, that so much of the judgment had been confirmed as sanctioned the application of torture. It is further remarkable, that although this is a transaction which happened in the year 1791, and although the master of this very negro was living, and many persons must be in existence who were actually acquainted with the circumstances of the transaction (if it ever did occur)—for a case of this sort must have made a very great noise in the island, as well from its own nature as from the torture being at least a very *unusual* application,—yet not one of these persons is examined as to the fact, or as to their knowledge of any one circumstance relative to such a remarkable event. Nay, although it is not before the Court on affidavit, yet I am sure the Court cannot shut their eyes from seeing and concluding, that according to the usual facility of communication between the Spanish main and the island of Trinidad, if there had been any proceedings of this sort in the Court of Appeal, they might have been obtained and sent over on the re-

turn of the second Mandamus, in order to establish the actual existence of such a proceeding if it were capable of proof.

This proceeding, therefore, rests on the evidence of this man De Castro, who is confirmed by no other person: he was examined under the first Mandamus, and no question was asked of him as to that fact. Affidavits were produced by my learned friends as grounds to support their motion, before the second Mandamus was obtained, and if I may refer to them, the witness has not stated the matter in so strong a way in his affidavit as he has done under the Mandamus. For in the affidavit he has assigned the reason why the torture was not put in execution to be, *because the record had not been sent back*; and now he says, the defendant Francisco *had escaped, wherefore it could not be inflicted*. So that in the affidavit he puts it expressly on the ground that the record was not sent back: now he has altered his story, and in the return to the second Mandamus, assigns for his reason, that the criminal had escaped.

Mr. Justice Lawrence.—Where was that assigned as a reason?

Mr. Garrow.—It is in the affidavit produced before the governor and council.*

Lord Ellenborough.—They do not make part of the return to the Mandamus.

Mr. Dallas.—You would not permit me to advert to them.

Lord Ellenborough.—Nobody can know them.

Mr. Garrow.—They were among the proceedings before the council at Trinidad.

Mr. Justice Le Blanc.—For the purpose of obtaining that evidence in a regular way, we issued the Mandamus.

Mr. Nolan.—According to what is now stated by this man, this is a copy of a record which is sent over here to be put in as evidence, the original record not having been sent back from the Court of Appeal; and it is insisted that the nature of the instrument itself is such as to give it credit. But, on the contrary, it is most manifest, that if it had been sent back to Trinidad it must have been found among the records of the island, and that if it could not be obtained there, evidence must have been given, because it might have been given, to shew how it was lost, and that before the Court can receive any other evidence or account of it.

My lords; I humbly contend, therefore, that upon considering this evidence, it was necessary for the defendant to make out two points, and that he has succeeded in neither. It was necessary for him to make out that torture was, by the law of Spain, applicable to a case similar in all its circumstances to this particular case. This has not been made out. It was necessary farther to make out, that torture might not only be applied by the law

* Vide ante p. 569.

of Spain, but that the law under which it was applied was the existing law of the island of Trinidad, at the time of the conquest. And the only evidence by which they attempt to shew that it was so is this supposed record, which is not so authenticated that the Court can give it any credit whatever.

But, my lords, I come to the next point, namely, whether, supposing such to have been the law of Trinidad at the time of the conquest, that circumstance would afford any justification to the defendant? I do humbly insist that it would not; because, as soon as that island became subjected to the British Crown, and thereby a part of the British dominions, the law of Spain as it respected torture *ipso facto* from that moment ceased, and became inapplicable to the subjects of his majesty there. Your lordships will recollect that this is the case of a conquest, and (as far as I have been able to discover by the terms of capitulation, as they appear on the proceedings,*) a conquest in which there was no stipulation respecting the preservation of the existing laws of the country. Further, my lords, I trust, I shall be able to convince your lordships, that if there had been such a stipulation, it would have made but little difference as to the legal result.

I shall not cite many authorities to prove that torture is in itself absolutely illegal, and that it has ever been held to be so by the law of this country. Many authorities cannot be required to establish so clear a proposition. Your lordships will find it laid down to be contrary to Magna Charta. It is so laid down in 2 Inst. p. 48, in lord Coke's Commentary on that statute. You will also find it stated in the most eloquent manner, by lord chancellor Fortescue, in his book *De Laudibus Legum Angliæ*, cap. 22. And it is likewise so laid down and commented upon, and sanctioned as contrary to the law of reason in the 1st volume of Mr. Justice Blackstone's Commentaries, page 133. I therefore take it as the foundation of my argument, that by the law of England, torture cannot be applied to any person whatever; for it is contrary to the fundamental principles of our civil rights, and therefore utterly inapplicable, not only to a witness, but even to a principal, in criminal cases.

My next proposition is, that if in a country conquered by us, there exist any law that is *malum in se*, that law instantly ceases by the conquest, as being contrary to the *fundamental principles of our constitution*. My lords, in a question of so much importance as this is, I shall feel it to be my duty to cite all the authorities I have been able to find as to how far the laws of a conquered country cease or continue after that conquest. The great principle which I find maintained by these authorities is, that any law which is *malum in se*, ceases to be a law of the colony by the

very act of being reduced under the British dominion. The first authority on the subject is Calvin's case, 7 Rep. p. 17. Lord Coke lays it down there, that all laws which are contrary to Christianity cease.

The report of this learned judge carries the law no further than where a Christian king conquers the kingdom of an infidel.

The next case is that of Blankard *against Galdy*, Salk. 411 and 4 Mod. 222. That was an action on a Jamaica bond, and the question was, whether the law of this country became, by the act of conquest, the law of that conquered colony. This point the judges seemed to deny in its utmost latitude: but it was there held, among other things, "that in the case of an infidel country their laws do not entirely cease by conquest, but only such of them as are against the law of God. And that in such cases where the laws are rejected or silent, the conquered country shall be governed according to the rule of natural equity."

This was the opinion of lord Holt.

The next decision I have met with is to be found in 2 P. Williams 75. And there the law is laid down more fully, and, as I believe, it has been adopted by the subsequent cases which I shall have the honor to quote to you.

It is a report by the master of the rolls himself of what had been decided by the lords of the council.

The second resolution is, that "where the king of England conquers a country, it is a different consideration; for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people; in consequence of which he may impose upon them what laws he pleases."

"But thirdly, until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place; unless where these are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail."

Now, my lords, unquestionably it cannot be maintained as a general position, that the laws of the conquered country are in all cases to prevail without exception. That is a proposition, which I think my friends on the other side can hardly contend for.

In the first place, if you take laws of the revenue which had been passed with a view to the advantage and interest of the mother country with which the conqueror is at that moment at war, these must cease; because it is impossible the conqueror can permit laws to subsist, which are advantageous to the mother country; for that would be to promote the interests of an enemy, which would be in direct repugnance to his own.

Lord Ellenborough.—The laws that are repugnant to the rights of the conquering state cease of course.

Mr. Nolan.—That position, carried to its

* See the articles of Capitulation, *antè* p. 493.

proper extent, is all for which it is necessary that I should contend. By the laws respecting religion in the very country from which this island has been conquered, an heretic is to be burned; and by the laws of the same country, any person converting a Roman Catholic to the Protestant religion might be burned likewise. If therefore the chaplain of one of his majesty's regiments had converted this poor girl to the Protestant faith, general Picton would have had a right, nay it would have been his duty, to have burned this reverend person, upon the principle for which his counsel must contend to day. That is one of the consequences which must follow from the position, that the laws of the conquered country are in all cases to remain.

Your lordships know, that under the Roman dominion there were various colonies and states distinguished by the title of *AUTONOMOI*, by which is meant communities that enjoyed the privilege of being governed by their own laws. But wherever the law of such a subordinate state was repugnant to that of imperial Rome, it ceased and became inoperative in all matters which respected the rights of a Roman citizen. I cite this on the authority of Bynkershoek, 9th Law of the Digest De Lege Rhodiâ.

Mr. Justice *Lawrence*.—Whence do you cite this?

Mr. *Nolan*.—It is in his commentary on the edict of one of the Antonines. And I cite it from a volume which contains the whole of his works. The title is De Lege Rhodiâ. The text is thus, "Gothofredeus, cap. 11. a. & h. b. non difficulter admittit nemini licuisse *αὐτονομία* sua rite adversus legem Romanam, adducit eo lib. v. pr. ff. de Usur. Sed nolim dicere quam bene in rem presentem. Illo autem præsidio quanquam destituemur, non tamen ægre crediderim civitates quas liberas fœderatas et *αὐτονομίας* esse Romani permiserunt, jure proprio, si Romanum obstaret non, fuisse usas. He cites to the same purpose Spanhemius, Exercit. 11. ad C. 17. ff. de Stat. Hom. §§. 13, 14, 15, 16, 17, 18, 19.—Bynker. ad L. IX. D. de Lege Rhodiâ, c. IX.

My lords, a case may be cited in point to this opinion, from Cicero, in his fifth oration against Verres. One of his charges against the Sicilian prætor was, that he had tortured a Roman citizen. It was not pretended but that by the laws of Syracuse he might have tortured a native inhabitant; but the accusation made by the Roman orator was, that he had scourged and otherwise tortured a Roman citizen. "Cædebatur virgis in medio foro Messanæ civis Romanus, judices; cum interea nullus gemitus, nulla vox alia istius miseri, inter dolorem crepitumque plagarum audiebatur, nisi hæc, Civis Romanus sum. Hac se commemoratione civitatis omnia verbera depulsurum, cruciatumque a corpore dejecturum arbitrabatur."

And again.—"Hucine tandem omnia re-

ciderunt, ut civis Romanus in provinciâ populi Romani, in oppido fœderatorum, ab eo, qui beneficio populi Rom. fasces et secures haberet, deligatus in foro virgis cæderetur? Quid, cum ignes ardentesque laminæ, cæterique cruciatus admovebantur? Si te illius acerba imploratio, et vox miserabilis non inhibebat, ne civium quidem Romanorum qui tum aderant fletu et gemitu maximo commovebare? In crucem tu agere ausus es quemquam, qui se civem Romanum esse diceret."

My lords it is manifest from these passages as well as from many others which I might adduce to your lordships, that the laws of Rome prevailed when the rights and privileges of the Roman citizens were implicated; and that whatever the local laws of the state or colony might be, no governor nor magistrate could inflict torture upon any person free of the city of Rome.

Another ground upon which it seems evident that the law of torture in this island must have ceased, even though, as abstractedly considered, it were not to be held *malum in se*, is, that such a practice is contrary to the inherent unalienable privileges of British subjects, and therefore cannot be inflicted on British subjects. But perhaps it may be asked whether aliens or natives are intitled to the same administration of the law in a conquered island as British born subjects who chance to be there. To this my answer is, that the original law of the island must either cease as to both or it ceases as to neither. If the question therefore as it respects the king's British born subjects be considered on principle, it can hardly admit of a doubt, that a British born subject who happens to be in the island of Trinidad cannot be tortured by the governor of that island; so that with regard to him, if ever the law of torture did exist, it must have ceased by the reduction of the colony under the Crown of Great Britain. Thus Puffendorff says, that a conqueror can exercise no right over those who assist him in his conquests by means of conquest; and the same position is laid down by Locke in his treatise on Government, Book 2, Chap. xvi., sect. 185. Unless, therefore, he could inflict torture on his fellow soldiers before, he has no authority to inflict it upon them after the conquest. This rule is observed in our law, which declares that no punishment in time of peace can be inflicted on soldiers and sailors who are within the kingdom, but according to the established laws of the land: 1 H. P. C. 500. Now if I am right in establishing this position, I think I have a great authority for saying, that if the law of the conquered country has ceased as to Britons, it has likewise ceased as to natives. For this purpose I shall take the liberty of citing the case of Campbell against Hall, Cowper's Reports, 204. That was an action brought, to try the right of the king to impose a duty of 4½ per cent upon all goods and sugars exported from the island of Grenada.

In that case lord Mansfield laid down

certain positions, which he considered as perfectly clear, and delivers as uncontrollable principles according to which the colonies are to be governed. The fourth of these is, "that the law and legislative government of every dominion, equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives."

If this position, therefore, be true, the question here is, whether Englishmen cannot be tortured by general Picton. It is not merely whether persons who are natives can be tortured since the conquest of the island; but, whether torture can be inflicted on a native Englishman coming from this country, and clothed with the rights and privileges which belong to him here. If he cannot, and lord Mansfield's position be true, then this unfortunate girl ought not to have had torture inflicted on her by any person in authority there, any more than a native of this country, who in the discharge of his duty, had accompanied sir Ralph Abercrombie thither. Suppose a person had landed in Trinidad from this country by mere accident, a man of high rank and consideration, although that can make no difference in the principle upon which the question turns, and that, in passing through the streets, a murder had been committed. If it should have happened that the alcalde had called this person as a witness, and he had declined to answer, or had not answered to his satisfaction, or if he were suspected by this judge of the country *lego et imperito*, as being privy to the fact, he must have undergone the torture. My lord, I would not state this unless I felt justified by the conviction that I am right. Questions like these are never to be stirred without weighty and powerful reasons, and unless they can be supported by great authorities.

The next authority to which I wish to refer your lordships, is *Fabrigas v. Mostyn*, 11 State Trials, 185.

Lord Ellenborough.—Is this different from the report of that case in Cowper?

Mr. Nolan.—It is a report of a different stage of the cause.

That was an action brought by Anthony Fabrigas against John Mostyn for an assault and false imprisonment. The cause was first tried in the Court of Common Pleas, before Mr. Justice Gould, when the jury gave a verdict with 3,000*l.* damages to the plaintiff. The question came on afterwards on a motion for a new trial, in the Court of Common Pleas during the time lord chief justice De Grey presided there. The cause was afterwards moved into this Court by writ of Error, brought upon a bill of exceptions tendered to the judge at the trial; and of that argument

and judgment upon the writ of Error, there is a full report in Cowper, 161. But the judgment of lord chief justice De Grey on the motion for a new trial in the Court of Common Pleas is reported in the eleventh volume of Mr. Hargrave's edition of the State Trials, and in delivering that judgment of the court, lord chief justice De Grey says, "If the governor had secured him" (Fabrigas the then plaintiff), "nay if he had barely committed him, that he might have been amenable to justice, and if he had immediately ordered a prosecution upon any part of his conduct, it would have been another question, and might have received a different consideration; but he commits him to the worst prison in the island. What could induce him to use a man with such hardship and inhumanity? Was not putting him into prison sufficient? Why was he to be deprived of the society of his wife and children, without being allowed any thing for his sustenance but bread and water, and to lie upon the floor?" The learned judge then proceeds in the following emphatic language, "He is then confined on board ship, under the idea of a banishment to Carthage. I do believe Mr. Mostyn was led into this, under the old practice of the island of Minorca, by which it was usual to banish: I suppose the old Minorquins thought fit to advise him to this measure; but the governor knew that he could no more imprison him for a twelvemonth than he could inflict the torture; yet the torture, as well as banishment was the old law of Minorca, which fell of course when it came into our possession. EVERY ENGLISH GOVERNOR KNEW HE COULD NOT INFLICT THE TORTURE; THE CONSTITUTION OF THIS COUNTRY PUT AN END TO THAT IDEA."

The chief justice is here stating the law as applicable to the power of the governor of Minorca. And he takes it for granted that if, when that island was under the dominion of Spain, torture could be inflicted, yet by being reduced under the dominion of this country, *ipso facto*, torture ceased, and that by the principles of our constitution a British governor could not inflict it, although he should be advised to do so by the ancient inhabitants of the country. The case of a governor is precisely the same with that of a judge. For the governor was judicially bound to govern by the law of the country not less than an ordinary judge specially delegated for the purpose. It is further to be observed, that that able and excellent judge (lord chief justice De Grey) puts the case of torture by way of illustration as being much too clear to admit of dispute.

My lords, I further contend that the king has not the power of enabling a governor or a judge, to govern or to judge by laws inflicting torture. If he has not the power to create new laws, by which a governor can apply torture, upon what principle can it be maintained that he can do so, without a capitulation purposely enabling him to enforce the

ancient laws in that respect? There is a most weighty authority which I shall cite to this purpose. It is the case of Campbell and Hall, already referred to; and it is the 6th position relied upon by lord Mansfield, when delivering the judgment of the whole court, “the 6th and last proposition is, that if the king (and when I say the king, I always mean the king without the concurrence of parliament) has a power to alter the old, and to introduce new laws in a conquered country, this legislation being subordinate, that is subordinate to his own authority in parliament, he cannot make any new change contrary to fundamental principles; he cannot exempt an inhabitant from that particular dominion; as for instance, from the laws of trade, or from the power of parliament, or give him privileges exclusive of his other subjects, and so in many other instances, which might be put.”—*Cowper*, 209.

Now, one fundamental principle in the English law is, that there should be an equality in the rules of justice—that all his majesty's subjects coming into our courts for redress are intitled to equal privileges, and are subjected to equal burthens. But if you look at the evidence of chief justice Nihell, you will find privileges with reference to the torture, extended to some persons in this island before the conquest, which are totally inconsistent with an equality of justice. Some persons were not to be tortured in respect of their age. A great many other persons, from the high situation in which they were in the country, were considered as exempted from the operation of this law. As for instance, a knight, a soldier, or a doctor of laws. If these exceptions were to be suffered under the British dominion, the equality of justice, which is the great fundamental principle on which the law of this country stands, would be trampled upon and destroyed. No, my lords, our constitution and laws carry most of our inestimable privileges to the natives as well as to our countrymen; and if it were not so the equality which is the boast and foundation of those institutions, which are the pride of the poor as well as of the rich, and the common support of all, would be lost and gone from us. My lords, before I conclude this part of my argument I beg to recur to the instance so admirably enforced by my learned friend, Mr. Garrow. It was referred to the judges, in the case of Felton who assassinated the duke of Buckingham, when it was proposed to the privy council to put the assassin to the rack, whether that could be legally applied. The judges declared unanimously that it could not be done by the laws of this realm. See 4, Blackst. 326, and lord Coke in his Institutes.

Lord *Ellenborough*.—Is this in Rushworth's Collection?

Mr. *Garrow*.—I believe it is my lord. I believe Mr. Justice Blackstone refers to Rushworth's Collection. (See 1 Rushw. Coll. 638.)

Mr. *Nolan*.—“If I am put on the rack I may accuse in my pain one of your lordships.”—That is the way in which it is nervously put by this assassin, and which is not very different from that in which it is reasoned by lord chancellor Fortescue. It is impossible to justify the practice of a piece of unavailing cruelty, which furnishes no means of ascertaining the truth, and therefore can never answer the purpose for which alone it could be introduced.

I shall not trouble your lordships any farther on the second part of this case, but shall go to the third and last position stated by my friend, Mr. Dallas, as the ground of a new trial. This is, that supposing general Picton not to have been authorised by the law of the island to inflict the torture, still, as he acted as a judge, he is not answerable criminally for what he did in that character. My lords, perhaps, I might now call on my friend to show by what authority his client took on himself to act as judge at all. The king did not appoint him a judge by his commission, and the authority with which he was invested by general sir Ralph Abercrombie's instructions ceased as soon as he was appointed governor by a general commission from the Crown. It may also be disputable how far a general officer has the power to constitute a judge. It may be doubtful whether he had such power. But I will take it for granted, at least for the present, that as soon as general Picton was appointed by a commission from the Crown he was to govern according to the public existing laws of the country. Still, if these existing laws did not appoint him judge of appeals, he had nothing more to do with them than any other person in the island would have had—nothing farther than general Chacon would have had after he had been made a prisoner by the British forces.

As I take it, by the old law of the island, there was no appeal to the governor of the island, from the decision of the alcalde, but the appeal was to the royal audience of Caraccas, and from thence ultimately to the king in council in Madrid. Now, it is in evidence that this mode of appeal was put an end to by his majesty's proclamation, and there is no evidence that general Picton was intitled to act as judge at all; there is nothing to that effect in the king's commission.—But, my lords, I shall assume for the purpose of the argument that he not only acted as judge, but was intitled so to do. Still, I should contend, that he, and he emphatically, when acting by that authority is responsible to this Court for what he does as judge, and that, although every inferior judicature in the island should be exempted from your jurisdiction.

My lords, there are many distinctions in our books upon the subject of how far actions against judges for misbehaviour in their office will lie. I shall not trouble you at any length on these points, nor refer you to them, except as to some distinctions which are taken in a

very elaborate judgment delivered by lord chief justice De Grey, in the case of Miller against Seare and others, 2 Black. Rep. 1141. The learned judge takes a distinction between judges of the superior courts of Westminster-hall, judges of courts of general jurisdiction, and judges of courts of limited jurisdiction; and his lordship lays it down that an action will not lie against judges of the superior courts, but will only lie against judges of courts of limited jurisdiction. Another distinction exists between judges of a court of record, and judges not of record. It is stated, that an action will not lie for a mistake in the conduct of a judge where he is judge of a court of record, but only against one who is a judge of a court which is not of record. I shall not trouble you with any remarks on these distinctions, because, in my humble judgment, they have nothing to do with the question before the Court. The question here is not whether an action will or will not lie against judges of a superior court, or against judges of a court of record. Neither is the question whether an action will lie in this case at all. It is one of much higher importance—it is, whether general Picton, acting both as governor and judge, both as author and executioner of the decree—both as the Court of original jurisdiction and as the Court of appeal in the last resort—whether he, who might have allowed of recourse to a superior tribunal, and has refused it, shall be amenable to this Court criminally for what he has done in these various and inconsistent capacities? It is, whether if he is not answerable here, he is answerable at all? My lords it is not stated in any of our books, neither is any reason to be found in them which supports the position, that though an action will not lie against a judge of a Court of record, yet that there can be no other mode in which the law of the country can reach him, when he acts in violation of his duty. The authorities seem to be the other way, and so is the sense and principle of the thing: See Hawkins's Pleas of the Crown, 1 B. ch. 72, sec. 6th. The judges of his majesty's courts of Westminster-hall are not responsible before each other, because they are of equal rank, and, in most instances, they are co-ordinate in authority. But was it ever doubted that they are answerable in the high court of parliament?

My lords, I beg leave to cite a case which is cited by all the authors on Crown law. It is mentioned by Coke, Hale, and Blackstone, and proves that even for a mistake in judgment a judge of the supreme courts may be brought into question. The case I allude to is that of sir Ralph Hengham mentioned in 3 Inst. 72, 1 Hale's P. C. 646, and 3 Black. Com. 409. That learned judge, from motives of compassion, altered a record in order to soften a judgment on a poor man by reducing a fine on him from 13s. 4d. to 6s. 8d. And though that alteration was not made from any unjust or corrupt motive, though it was done with no

improper view, and from no other purpose than the feelings of compassion, yet he was fined in eight hundred marks. This case was cited by justice Southcot, one of the judges of this court in the reign of queen Elizabeth; when the chief justice would have ordered the rasure of a roll in a particular case, Southcot cited this case as the reason why he could not assent to its being done. My lords, I ask your attention to this case merely to show, that the point itself, as to the irresponsibility of a judge of a superior court, may be questionable. The question of how far a judge must exceed his jurisdiction in order to render him amenable for his conduct, may depend upon the inquiry whether he has clearly and plainly misapplied the law which he had power to administer in appropriate cases. I admit, however, that the great distinction taken in the books respecting the liability of a judge of a court of record is, whether he has exceeded his authority or jurisdiction in what he has done. Upon this distinction between an excess of jurisdiction and a mistake in its application the cases have run extremely nice. My lords, perhaps I do not see the ground of that distinction clearly—but so far as I can comprehend it, and so far as it is applicable to the case, I take it to be, that if governor Picton has acted altogether without law, he has exceeded his authority. That, by inflicting torture he has not mistaken the law, but has acted without law. In 1st Hale's P. C. 498, that learned judge observes, that "if the justices of the Common Pleas hold plea in appeal of death by writ, and give judgment therein for the party to be hanged which is executed accordingly, I think it is an error, and a great misprision in them, but not felony, because they had colour to hold plea thereof by an original writ out of the chancery under the great seal." And we find in sergeant Hawkins, P. C., book 2, ch. 22, and section 26, "As to the second particular, viz. in what cases inferior judges are punishable in the manner above-mentioned, for acting unjustly, oppressively, or irregularly, it is not easy to meet with cases of this kind in the books, there being seldom any thing in them so remarkable as to be thought worth reporting. But it seems to be a common practice to grant attachments against the judges of such courts, for any practice contrary to the plain rules of natural justice though it have been never so long used in such courts, as for denying a defendant a copy of the declaration against him and going on to trial, or giving judgment against him without giving him any manner of notice or time to make his defence, or for taking of unreasonable distresses, &c." It goes on to state a great number of other cases where the judges of inferior courts, who have acted contrary to the plain and natural rules of justice, are responsible and punishable for the irregularity of their conduct, even though no improper intention is supposed to have influenced them. The same learned

writer, in P. C. book 1, ch. 28, and sections 5 and 6, observed (and it is continually stated by lord Hale in his Pleas of the Crown) —“If the court of Common Pleas give judgment on an appeal of death, or justices of peace on an indictment of treason, and award execution, which is executed, both the judges who give, and the officers who execute the sentence, are guilty of felony; because these courts having no more jurisdiction over these crimes than mere private persons, their proceedings thereon are merely void, and without any foundation. But if the justices of peace on an indictment of trespass arraign a man of felony, and condemn him, and he be executed, the justices only are guilty of felony, and not the officers who execute their sentence. For the justices had a jurisdiction over the offence and their proceedings were irregular and erroneous only, but not void.”

This is a case in which the judges had mistaken or misapplied the law by applying the punishment of felony to the case of a trespass, and yet they were considered by that respectable authority as amenable to answer for a great misdemeanor. My lords, my argument on this point goes merely to this—That a judge of an inferior jurisdiction, whether he be judge of record or not, yet where his jurisdiction is limited, and whether he is acting ministerially or judicially, is responsible criminally to this court for such of his errors as affect the rights of any of the king's subjects.

If I have proved that position, I should be glad to know by what books or by what authority general Picton can be considered otherwise than as a judge acting under limited authority and in an inferior jurisdiction? I might here truly say, that he cannot be considered as invested with authority even to that extent. In all my researches I have not been able to find any case to show that he stands intitled to the privilege of that situation. But I go farther, and I take the liberty of stating, that even if, in contradiction to what I have urged, it is to be taken for granted that every other judge, of whatever description he may be, is not responsible for his conduct, still the judge of a colony, if he be so in the last resort, without the power of appeal, must be responsible for his conduct in this court. He must be so responsible, because he is either responsible in this court or no where. I say either responsible in this court or absolutely no where.

The Crown cannot create a judge who is not responsible, because it would be contrary to the fundamental principles of the constitution on which all law stands. The Crown cannot create a judge who, however absolute his acts may be, shall not be amenable to any body for what he does in that capacity. His majesty cannot delegate that exorbitant authority to any subject; for he cannot commit such power to an inferior minister, as, in contemplation of law, it would be impossible for him to exercise in his own person. If

such a judge be responsible at all, he is responsible for the illegality of his acts; for as it is impossible to know what passes in the heart of man, the law must infer guilt where the act is illegal.

My lords, I do not take this distinction without having considered that it is supported by authority, but permit me to say in the first place, that the reason why judges of record are not punishable by the common law strengthens this distinction very much, for it is an established rule in legal construction, that where the principle of the law fails, there the law itself also ceases. A judge of a court of record is not responsible civilly, because little or no injury can arise from his mistakes in judgment; a writ of Error is allowed from one court to another, and his opinions are canvassed in all of them, by each of which in succession his mistakes may be rectified, while his judgment must, if other tribunals fail, come finally to be corrected before the king in parliament, who is the fountain of all law, and is supposed by the constitution to be incapable of doing any wrong. Thus the subject never in theory and seldom in fact can suffer injury; and therefore an impunity is properly held out. But it is otherwise, where the judge sits in a criminal court which is not a court of record, especially if he administers justice in the last resort. This very distinction is taken and laid down by lord Mansfield in his judgment in the case of *Mostyn and Fabrigas*, which I have already quoted to your lordships for other purposes. He says, “Nothing is so clear as that to an action of this kind the defendant, if he has any justification must plead it, and there is nothing more clear than that if the court has not a *general jurisdiction* of the subject matter, he must *plead to the jurisdiction*, and cannot take advantage of it upon the *general issue*. Therefore by the law of England, if an action be brought against a judge of record for an act done by him in his judicial capacity, he may plead that he did it as judge of record, and that will be a complete justification. So in this case, if the injury complained of had been done by the defendant as a judge, tho' it arose in a foreign country where the technical distinction of a court of record does not exist, yet, sitting as a judge in a court of justice, subject to a superior review, he would be within the reason of the rule, which the law of England says shall be a justification; but then it must be pleaded.”—*Cowper*, 172.

And his lordship afterwards says:—“Therefore, in every light in which I see the subject, I am of opinion, that the action holds *emphatically* against the *governor*, if it did not hold in the case of any other person. If so, he is accountable in this court, or he is accountable no where; for the king in council has no jurisdiction. Complaints made to the king in council tend to remove the governor, or to take from him any commission which he

holds during the pleasure of the Crown. But if he is in England, and holds nothing at the pleasure of the Crown, they have no jurisdiction to make reparation by giving damages, or to punish him in any shape for the injury committed. Therefore to lay down in an English court of justice such a monstrous proposition as that a governor acting by virtue of letters patent under the great seal, " (and such was governor Picton) " is accountable only to God and his own conscience ; that he is absolutely despotic, and can spoil, plunder, and affect his majesty's subjects both in their liberty and property with impunity, is a doctrine that cannot be maintained."—*Cowp.* 175.

My lords ; I therefore take the liberty—

Lord *Ellenborough*.—There is another passage to the same effect in page 173 of *Cowper*. " The governor must be tried in England, to see whether he has exercised the authority delegated to him by the letters patent legally and properly ; or whether he has abused it in violation of the laws of England, and the trust so reposed in him. "

Mr. *Nolan*.—My lords ; I intended to have cited that passage, and there is only one authority more with which I shall trouble you. It is the case of *Hall v. Hill* and others, 7 Mod. 84. In that case lord Holt was of opinion, that the Court of King's Bench ought to grant an attachment against an inferior court at Bristol, for having granted a new trial in a cause after judgment given by themselves, after the costs had been taxed by the proper officer, and a year had elapsed. I cite this case to show the principle on which I ventured to rely ; namely, that with regard to courts of limited jurisdiction, tho' they do not exceed their jurisdiction, tho' they had a right and authority to do the thing, yet that they are responsible for their conduct if they do it in an improper manner. There was no criminal intention proved in this case ; lord Holt observes " It is no excuse for them to say, they were not lawyers, for they ought to take advice of lawyers ; and if they are so presumptuous as to take upon themselves the knowledge of the law, it ought not to be suffered tho' there be no corruption in them. " There is no hardship on any man ; the hardship is on the subjects of the country, who may be subjected to the administration of such justice, or rather of such oppression. It has been stated, that it is a great hardship on general Picton, if he is to be held responsible for his conduct when he had no means of obtaining a knowledge of the law of the island ; and that he acted according to the best of his knowledge. How much greater hardship was it on this poor girl, who has been twice exposed to the torture, which could not have happened if he had taken the trouble before he had ordered it to be inflicted, to inquire whether he was impowered by the existing laws to do so. He did not

use even that slight precaution, and in consequence of his neglect of such an obvious duty, he has done a most serious injury to this unfortunate young woman. He has done her the most grievous wrong, in consequence of his misunderstanding (I will use no harsher term) or misapplying the law. For that he is responsible in this court. He has acted in violation of the constitution of the country. He has done so by an act of despotic cruelty, when the common feelings of humanity, and a sense of what was due to the honor of his country and the British name, should have forced him to hesitate. His ignorance is his crime, not his justification. It was his duty to know the law, before he took on himself the government of that colony. He and every man is bound to know the law. And it is a most singular principle of jurisprudence, which is to be set up this day, that ignorance of the law is inexcusable in all the king's subjects of every description, except the judge who is bound and sworn to administer it.

Therefore, on all these grounds which your lordships have kindly permitted me to state at such length, I trust you will think this rule ought to be discharged. I rely upon them all, but especially upon this, that tho' it should appear that in the year 1797, when the island of Trinidad became a conquest of this country, the application of torture was allowed by the Spanish law, yet that law ceased immediately after the conquest, and fell prostrate before the liberty and freedom which every person in this country enjoys. For my lords, it is the glory of the British conqueror that he comes as the Angel to the imprisoned Apostle who when " he smote him, the chains fell off from his hands. " When an English governor set his foot in the island of Trinidad the fetters of every man, who was bound inconsistently with British liberty, should have been removed, and the injured suffered to go free, instead of having their misfortunes and miseries increased.

My lords ; I hope you will excuse me for deviating so far from the strict line of examining the subject, and for having occupied so large a portion of your lordships time. This is a case of very great importance, and it is impossible to discuss it as a lawyer, without feeling it most deeply as a man.

Lord *Ellenborough*.—You have argued it Sir, with great ability.

Mr. *Harrison*.—My lords ; After the very powerful and comprehensive argument of my learned friend Mr. Nolan, I shall not long trespass upon the time of the Court. I cannot add a word upon the general topics to which that most conclusive argument has been directed, without diminishing the force of his reasoning. In the very few observations therefore which I shall make, I shall confine myself to some points that have not been so

fully argued by my friend; I shall apply myself solely to the consideration of the evidence before the Court, and of these law books, the Recopilacion (which is a collection of laws for the government of the Spanish West India islands), the Elizondo, the Partidas, and the other books which have been just noticed.

The objection of my friend, Mr. Dallas, to M. de Vargas's evidence, is of this description: Mr. Dallas states that in the testimony of M. de Vargas, there are one or two instances of misrepresentation, and that the laws of Old Spain were in full force in Trinidad, in all cases where no alteration is adopted by the Recopilacion. Now, every one of the translations given in evidence, is expressly of a different description; and seeing that the Spanish West Indies did not (as in cases not provided for by the Recopilacion) adopt the law of Partidas, it is necessary to show that they adopted the Old Spanish law of torture to supply the deficiency in their own code. There is nothing which shows that in every case, where there is no provision in the Recopilacion, they were justified in resorting to the laws of Old Spain. Considering that every code of laws is imperfect, though it be not particularly specified it is usual, in order that there may not be a failure of justice, to resort to the general laws of the mother country. You may put a variety of cases in the colonies of Great Britain, which are under particular laws of their own but are governed also by the laws of this country, where no provision is made by the colonial code. For instance, take Jamaica, where particular provisions exist with regard to the priority of judgments and the manner in which execution is to be obtained. But if there were no law in Jamaica with reference to excise proceedings, a lawyer in that island would naturally refer to English law books to see how the priority would be affected; among other books Mr. Tidd's Practice might have been consulted and yet it never could be said that, because you saw that or any other English book of practice upon the table of a lawyer, you would adopt the forms there laid down in all instances where the laws of the island were silent. I think that it does not appear from the evidence under the Mandamus, or from that which has been given here, that there was any deficiency in the colonial law with reference to the case of Gonzales, or that there was any want of jurisdiction or of power to carry on criminal proceedings against him for the purposes of public justice. Chief justice Nibell, as well as the other witnesses in the return to the last Mandamus, enumerates every one of these books as being of authority in the island without attempting to observe the distinction to which I have alluded. And referring to the books themselves, I humbly submit that my friends have not been able to find any thing which shows that they could adopt the laws either of Castile or of the Partidas,—I speak only of the law as it is to be found in the books,

But what has been the practice? There has certainly been no evidence of the practice of torture, by which its infliction upon Luisa Calderon can be supported. On the contrary, we have the evidence of persons whose experience goes back fifty years, and who never knew torture inflicted upon any person until this instrument was brought into the island by general Picton, who introduced it first into the barracks and then into the prison. He now endeavours to protect himself by the authority of these law-books, and says, that he had a right to resort to the laws of Castile and the Partidas. But it appears from the evidence of the witnesses, that there has never been an instance of the application of torture under these laws, in the Spanish West Indies.

But what appears upon the return of the second Mandamus? We have a copy of a record and hearsay evidence that a sentence pronounced in the island was confirmed upon an appeal to the Caraccas. But upon looking at it attentively, this is so loosely stated, that the presumption is rather the other way. There is no legal evidence that it was confirmed, and if it had been so, the original record and the confirmation of it would have been returned to the island to have enabled them to carry the primary sentence into execution. This is the only instance that is stated, and it is stated thus vaguely. It is not even said that it can be considered as evidence, and I am satisfied that my learned friends on the other side can no more contend that this transaction is in favour of their position, than that it is strictly legal evidence.

Having made these observations upon the law-books themselves, and upon the application which has been made of them, it would be wasting the time of the Court if, after my learned friend's powerful argument, I trespassed any further upon your lordship's attention.

Lord *Ellenborough*.—Mr. Dallas, I am afraid we shall not be able to hear you to-day at such length as would enable you to make any material progress in your argument, and therefore we had better stop here.

COURT OF KING'S BENCH,
Thursday January 28th, 48 Geo. 3rd,
A. D. 1808.

Mr. *Dallas*.—My lords, I shall now endeavour to support this rule, which I obtained originally on two grounds:—First, *that in the evidence on which the verdict rests, there was a gross misrepresentation of a most material fact, so material indeed as to constitute the very foundation of this charge; and which misrepresentation took place under such circumstances as rendered it impossible for general Picton, or those to whom the conduct of his defence was entrusted, to have foreseen or guard-*

ed against it by the exercise of any possible care or diligence:—Secondly, that supposing your lordships to be even now of opinion, that the only fact found by the jury was correctly found, still on this indictment the defendant ought to have been acquitted, inasmuch as the act complained of was done (not maliciously, but erroneously) in the exercise of his judicial functions; and is therefore not properly the subject of a civil action, and still less of a criminal prosecution.

These two grounds are not only distinctly separate from each other, but are completely opposite in their natures: On the first, I impeach the verdict with reference to the only fact which it finds; on the second, I concede the fact, but I oppose to it the situation held by the defendant as being, in point of law, an unanswerable justification, and which should have produced his acquittal.

In the consideration of this subject, it is necessary that these two grounds should be kept apart.

With respect to the first, the facts lie within a very narrow compass, and to me they seem to lead to a conclusion perfectly clear. The only point in the indictment is, whether torture (being part of the law of Old Spain) was the law of Trinidad at the time of the cession of that island? At the trial the inquiry took this course: Mr. Garrow gave evidence of the torture having been inflicted by the order of general Picton, in compliance with a representation which had been made to him by the inferior magistrate (who was invested with jurisdiction to conduct the proceedings), that by the law of Spain torture was applicable in that particular case. Having proved the fact, Mr. Garrow established, that within the memory of man, there was no instance of torture having been inflicted in any case whatever. Having proved this (strongly I admit) by the evidence of the gaoler, and of other persons, one of whom had been twelve years in office, he closed the case on the part of the prosecution.

It then became my duty to state what occurred to me on the part of general Picton. I commenced by relying upon the proposition which I have just urged as my first ground in support of the rule—viz. that by the general law of Spain, torture was applicable in cases similar to that of Luisa Calderon; that Trinidad being part of the dominions of Spain, that settlement was subject to the general law of Spain; and that, unless the prosecutor could show it to be an exception, it followed that the application of the general law of Spain, in this particular instance, was right.

From the different books upon the Spanish laws, which I proved to have been made use of as books of authority, I cited a great number of passages which decided the question whether, by the law of Spain, torture could be applied. I then stated that, supposing it to have been otherwise in Trinidad, and that general Picton was mistaken, still it was

merely an error in judgment upon a point of law, and for which mistake consequently he was not answerable.

When I had endeavoured to enforce these propositions by general arguments, my lord chief justice was pleased to interpose; and his lordship stated that several of these points were of considerable importance, and intimated that, with a view to a more complete discussion of them, it would be advisable that a special verdict should be found. To this Mr. Garrow, on the part of the prosecution, readily consented. I, of course, did the same for general Picton; and consequently, in this stage of the cause, a special verdict was agreed upon.

Shortly afterwards, and when I had been stopped in the middle of my address to the jury, Mr. Garrow was asked, whether he would admit that, at the cession of the island, torture was applicable? That was properly put to him by the lord chief justice, in order to introduce the other question, which I have now stated. In answer it was said by Mr. Garrow, that he could not admit the fact. He said, that he might admit such was the law of Spain, but that the island of Trinidad, as a colony, was not under the operation of that law; on the contrary, that there was a particular code for the administration of justice in the colonies, a system of a more mild and moderate character, and that therefore the law applicable to Old Spain was not applicable to Trinidad. In consequence of that fact being controverted, which the learned judge supposed might not have been the case, it necessarily became the subject of evidence.—I then put in the different Spanish authors, to show what the law was; and when I had concluded my evidence, Mr. Garrow produced evidence in reply, which evidence consisted of three folio volumes (I will call them by their translated name), intitled the “Code or Compilation of Laws for the Government of the Colonies of Spain in the Indies.”

These were deposited on the table to show that they contained the code of laws for the government of the Spanish colonies; and then Mr. Garrow called as a witness a person of the name of De Vargas. He said that he had practised as an advocate; that he was acquainted with the administration of justice in the colonies, and particularly with the books given in evidence; and, in answer to a question that was put to him, he distinctly swore, that, from the beginning to the end of those books, there was no passage that warranted the infliction of torture. In truth, his evidence was what one might have expected it to have been:—that, whatever the general law of Spain was, the colonies formed an exception to it; that the law, with respect to the colonies, was to be found in these volumes; and that, in them there was not a passage that warranted the infliction of torture. Upon this evidence I was permitted to comment,

and then Mr. Garrow addressed the jury in reply.

Lord *Ellenborough*.—I rather think I desired you to state every thing you wished. I restored you to the full right of observing upon the whole case.

Mr. *Dallas*.—I am far from meaning to complain of any thing done by your lordship.—Upon this,—and that I may be correct in my representation, I will not trust to my memory or to the notes I took myself, but I will read from the report taken of the trial in short-hand, what was the charge given to the jury,—my lord chief justice, after cautioning the jury to divest themselves of every thing that could inflame their minds, so that they might give impartial attention to the question, said: “You are to consider a plain question of fact, *i. e.* at the cession of Trinidad to sir Ralph Abercrombie, what was the law of that island as confirmed by the English authorities? It is for you to determine whether the law by which the island was then governed, did or did not invest the governor or chief magistrate with the power of applying personal torture upon any occasion.”*

The question, therefore, for the jury to decide, was confined to the single point—What was the law of the island at the time of the cession? Not going into other grounds, but avoiding every other ground; not putting it, that supposing torture to be the law of the island, what would be the effect of the cession in regard to the introduction of English law? that formed no part of the charge to the jury; but their attention was confined to the only question of fact that could arise, namely, what was the law at the time of the cession of the island? The lord chief justice stated to the jury (and I do not complain of the charge), that there were two points to be considered by them: *first*, that in this case there was no evidence of usage; that there was no instance stated on the part of the defendant, in which, in the administration of criminal justice, torture had been inflicted; and, that this was the more material, inasmuch as, *secondly*, the law was silent upon the subject, and there was no passage in the volumes containing the law applicable to the colonies, that warranted the infliction of torture. Under these circumstances, the jury found in terms that, at the time of the cession of the island, torture was no part of the law: whereupon they were directed to find the defendant guilty; the lord chief justice stating, that I should have the advantage of the other points on a motion for a new trial.

I hope I have succeeded in my endeavour to give a faithful representation of all that occurred on the trial; and, my lords, if nothing had afterwards passed, it would have been difficult for me to have attempted to set aside the verdict. But it happened that Mr.

Forbes, the solicitor for general Picton, had heard of the existence of these books; and being anxious, if possible, to bring them before the Court, he applied where he thought it was most likely he could obtain them. He applied at Holland house, and at the London Institution, where purchases of books in all languages are made; he also applied to the different booksellers in London, but without success. In the existing state of hostilities between England and Spain, it was not to be expected that they should be obtained from that country; but it happened singularly, and I hope fortunately for the justice of this cause, that about this time the sale of the marquess of Lansdowne's library took place, in which these volumes were; they were bought by the London Institution, and the gentlemen at the head of that society gave Mr. Forbes notice of the fact, in consequence of which he was furnished with the volumes, and they were put into the hands of a proper person to be translated.—Upon the translation of these volumes we found, that what the witness De Vargas swore, though it was *literally* true, was *substantially* and *virtually* false; for though those books contain not a word on the subject of torture, they expressly say that, in all cases where they are silent, the law of Old Spain, that is the law of Castile, shall be the rule of conduct, *and that law ordains the application of torture*; though in the volumes themselves there is no passage stating that torture is allowed, yet by this adoption of the law of Spain, and by the incorporation of that law into the particular code, it is ordained, that the law of Spain, with regard to torture, shall be the rule applicable in the administration of criminal justice in the colonies of Spain.

Stopping here, even if nothing else were in the case, I would ask, whether it is possible that a verdict, found under such circumstances, can be suffered to stand? If I have made out a strong case, and no answer to it is given by the other side; if no affidavit is filed to support the evidence of this person; if there is no affidavit that we have mis-stated the contents of this book; then I am at a loss to conceive how, in a case where there is such a gross misrepresentation of a fact that constitutes the main ground of the charge, the Court can come to the conclusion, that a verdict founded on such a misrepresentation can stand; and therefore I submit that I am entitled to have the case reconsidered.

Supposing, however, that I have deceived myself in the view I have taken of the subject, it will then be necessary that I should proceed to state what has happened subsequently to the rule to show cause being granted. Your lordships may recollect, that in consequence of the verdict against general Picton becoming known in Trinidad, the different officers of justice there felt it their duty to make certain representations to the secre-

* *Vide antè*, p. 536.

tary of state. I am not going to mention what is not evidence; I state it only to recall to your recollection, that in consequence of the transmission of these papers, and the Court thinking they were not evidence, a mandamus was issued to have the point inquired into, and to have it certified by commissioners what was the law of the island. The evidence has since been returned, and without going through the particulars of what every person stated, it will be enough to give generally the substance of that evidence. They all agree, that, at the time of the cession of the island, the law of Old Spain was applicable; I shall therefore merely state that which is most material, namely, the certificate of what was the law of the island, made by the person who was chief justice at the time of issuing the mandamus. The examination to which I allude is that of the hon. John Nihell, esq. the chief judge, chief magistrate, and auditor of the island, who states, that he has been a constant resident in the island for twenty-one years past, and has, during that time, passed through every office of distinction in the government, except that of governor; that he was alcalde of the second appointment during the year 1796, and at the opening of the courts in the year 1797 was chosen alcalde of the first election, and was in that situation when the island was ceded; that he was appointed chief judge of the island by a special commission from sir Ralph Abercrombie, and was also judge of the Consulado, or Commercial Court, and of the Instance Court of Vice Admiralty. He says, he thinks he perfectly understands the Spanish language and the laws of Old Spain. Then he is asked, what was the law of Old Spain, and of the island of Trinidad, at the time of the surrender of the island to his majesty's arms, in 1797, with respect to the infliction of torture? His answer is, that "the law of torture was taken from the Roman code, and introduced into the laws of Old Spain, called the *Siete Partidas*, by Alphonso the wise, at the Cortes held at Alcala Herrerres, in 1348. The *Siete Partidas* are in the highest repute in Spain and the Indies, and they form a code of laws, by which all the tribunals of the Indies and Old Spain have been governed, from the days of Alphonso to the present time. In these *Seven Partidas*, particularly in the third and seventh, the law of torture is not only ordered to be enforced, but all cases in which it is to be inflicted are very circumstantially explained."*

It happens, my lords, that I find, with respect to this book, which he states is of such high character, the following passage in lord Bacon's works.† It is in his "Offer to king James of a digest to be made of the laws of England." He says: "Alphonso the Wise,

the ninth of that name, king of Castile, compiled the digest of the laws of Spain, entitled the *Siete Partidas*, an excellent work, which he finished in seven years:" he adds, "And as Tacitus noteth well, that the capitol, though built in the beginnings of Rome, yet was fit for the great monarchy that came after; so that building of laws sufficeth the greatness of the empire of Spain which since hath ensued." Now, signor de Vargas has sworn, that this was an ancient and obsolete law.

Lord *Ellenborough*.—Is that letter of lord Bacon's, to king James, or to the duke of Buckingham?

Mr. *Dallas*.—It is in his "Offer," addressed to king James. Your lordship will find, upon turning to de Vargas's evidence, that he treats it as an old and obsolete law.

Mr. Nihell proceeds to state, that "the law of torture as in force in Trinidad, at the time of the conquest of the island in 1797, and in all other parts of the Spanish dominions, is likewise explained, in a very satisfactory manner, by Bolanos, in his *Curia Philippica*, and also by Elizondo, in his *Universal Practice of the Tribunals of Old Spain and the Indies*." He then (and part of the objection to the different citations at the trial was that they were taken from old and obsolete laws) proceeds to state, that "the learned authors Elizondo and Bolanos, have written so late as 1788, 1790, and 1792, on the law of torture, for the express purpose of directing the practice of the tribunals of the Indies, as well as those of Spain." He is asked, "Whether the infliction of torture was authorized by the *Recopilacion de las Indias*, at the time of the capture of Trinidad in 1797?" He says, in answer, that he knew but of one law, among the laws which are called the laws of the Indies, that said any thing of the law of torture. This law is the fourth law in book the ninth, title third, page 47 of the third volume of the fourth edition, printed at Madrid in 1791. In speaking of sentences of torture pronounced by a court of *Tueces Letrados* (that is, composed of judges who are lawyers), it says that such sentences may be executed without further appeal, meaning to a superior tribunal. The other volumes of the laws of the Indies are silent with respect to the law of torture, and they neither order nor forbid the use of it." Then he is asked, "Where the laws of the Indies are silent, as to any particular matter of law or practice, do they direct or order, that recourse shall be had to any other laws?" The answer is, "the laws of the Indies are a very imperfect code, and they leave innumerable cases to be regulated and decided by the laws of Old Spain. The cedula of king Charles 2nd of Spain, published at Madrid in 1680, directs, that the collection of laws, which that king had just then published, under the title of

* *Vide ante*, p. 601.

† Vol. 2, p. 550, 4to ed.

“Recopilacion de Leys de las Reynos de las Indias, should serve as a code for the decision of all and every species of law-suits in the colonies (that is, where they are applicable) however contrary they should be, in some instances, to the laws then in force in Old Spain. The second book, title first, of the same collection, ordains, that the laws of Castile, and other laws of Spain, should be followed, whenever a case occurred which was not provided for by this code or collection of laws of the Indies.” He adds, “I know of no other code of laws peculiar to the Indies.”

The evidence of the chief justice is wound up by the following questions: “Were the laws of the Seven Partidas and the authors Elizondo and Bolanos looked upon and considered as law in Trinidad at the time of the capture of the island?” His answer is, “Yes; Elizondo and Bolanos were particularly recommended to me by governor Chacon, as guides for my conduct in my official situation of chief judge at the conquest of the island, and also by his assessor general Don Juan Jurado y Laynes, who was considered as the most able Spanish lawyer that ever appeared in Trinidad, and who, on account of his abilities as a lawyer, was, after the conquest of the island, appointed auditor and assessor to the captain general of Caraccas.” He is then asked, “Can you undertake to say, that the law of Old Spain, with respect to the infliction of torture, was a part of the law of Trinidad, at the time of the capture in 1797?” To which he says in answer, “Yes, I have read and studied several Spanish authors on the subject of the law of torture; some of them have written in favour of it, to shew the use and necessity of it; others have written against it, to prove that it ought to be abolished; but not one of them has attempted to say that it was abolished, or was not in force, either in Spain or the Indies: and it appears strange to me, that the question as to the law of torture not being in force in this island, should be agitated.—There cannot exist, at this day, a possibility of doubt, that the law of Old Spain, with respect to torture, was in force in Trinidad, and was part of the law of the island, at the time of the conquest of it in 1797, unless it can be made appear, that Trinidad was not a Spanish colony at that time.”

Having thus stated the evidence returned under the mandamus, I would only again presume to ask, whether it is not quite sufficient to induce the Court to grant a new trial? The evidence not being controverted or opposed by any thing that has been offered on the other side, and this verdict standing on the finding of the single fact that torture was not part of the law of the island at the time of the capture,—that finding too having been produced by a misrepresentation which has been detected,—I would humbly ask the

Court, whether upon this body of proof unopposed, in the case of a public officer convicted of such an offence, the conviction appearing to be the effect of misrepresentation, and the law being certified by the chief justice to be in opposition to the finding by the jury, the verdict can be permitted to stand?

It is in this view that I submit to the Court, that the present is a case in which the verdict ought to be reconsidered. I do not know whether, after I have stated what the law of the island was at the time of the conquest, as certified by the chief justice, it is necessary to advert to the copy of a record in 1791, by which it appears *that this law was carried into execution*. That it was so carried into execution appears from the examined copy of a record, the original having been filed at the Caraccas. It was in the case of a negro, of the name of Francisco, who was suspected of having committed a murder. He applied to have a person to defend his cause, and accordingly a defensor was appointed for him. The record is extremely long.—It appears that every possible objection was made by the defensor. It seems that the proof appearing to be imperfect, the Court, proceeding under the general law of Spain, ordered the infliction of torture in that particular instance; and what is material in this case is the circumstance I am about to point out, for if you should think it necessary to refer to these voluminous proceedings, you will find that the person who was appointed defensor appears to have been intimately acquainted with the laws of Spain, and to have had a thorough knowledge of the subject. I will only state, that in 1791, when every objection had been made, it seemed to have been admitted, that in that particular case torture might be applied. The passage to which I allude is this. The defensor states, moreover, even the words imputed by way of confession to the accused—

Lord Ellenborough.—Is this returned?

Mr. Dallas.—Yes; you have the whole proceedings returned. The record consists of 160 pages. The proceedings occupied nearly a year, and are returned by the register of the records. In the course of the case, the person entrusted with the defence expresses himself thus. Talking of confession, he makes this observation: “Moreover, even could the words be ascertained to relate to the crime of which the party is accused, they would at most but amount to an extrajudicial confession, though the confession was made in the presence of,” &c.*

Thus he contends, that the confession not only fails of operating as a proof, but does not amount to a suspicion of guilt, so as to authorize the infliction of torture. All he argues for, is, that the confession does not amount to

* See the passage in the proceedings against Francisco the negro, *ante* p. 710.

such a shade of guilt as to authorize the infliction of torture, admitting that, if that shade were deeper or the suspicion stronger, then the torture might lawfully be applied. No objection was made, *in point of law*, by the person entrusted with the defence; but he admitted that, if the suspicion had been stronger, the infliction of torture would have been justified by the law of the island. Taking this instance as connected with the question, it is impossible on this part of the case to doubt that the verdict has been improperly found, and that it is a case, which, from every thing that has appeared, ought to be reconsidered.

Having now concluded my observations upon this part of the case, I may be permitted to state, that if I am right, it is difficult to conceive how the other questions that have been introduced can now be investigated. Until your lordships have disposed of the question, whether the present verdict shall stand or fall, it is totally beside the case to discuss any one of the questions that have in succession been made the subject of argument. I will state what they are. It is said, that this person on whom torture was inflicted, was under the age of fourteen years, and was therefore not a fit subject to undergo it: next, that she ought to have had a person to defend her, and that she had no such person: next, that general Picton had an appellate, and not an interlocutory jurisdiction: and lastly it was urged by Mr. Nolan, that whatever may have been the law of the island before the conquest, yet by "the principles of the British constitution" the king had no power to inflict torture, consequently that he could not delegate that power to another, and that torture therefore, supposing it to have been the law of the island before the conquest, ceased upon the surrender of it to the British arms. How is it possible, upon the present finding of the jury, for any one of these questions to arise?

When my learned friends say she ought to have had a defensor, they admit that torture was the law of the colony. When they say that she was not liable to torture, *because she was under fourteen years of age*, their argument admits that the law existed, but alleges that the particular case was an exception. So, with respect to the appellate and interlocutory jurisdiction, and so lastly with respect to the great question that by the cession of the island the law ceased. I should be glad to know how a law can cease that never had existence. In this view of the case I am at a loss to conceive how we can be drawn into the discussion of these questions—I will put the case in every way, and you must take it in one or the other. You must be of opinion, that the verdict is right, or that it is wrong, or that it is doubtful.—If you are of opinion that sufficient doubt is introduced into the case by the evidence we have given, then this record cannot stand as it is; for it finds the defendant guilty of that, with respect to which your lordships are

of opinion there ought to be a reconsideration. So it would stand, if the verdict were doubtful on the proof. Suppose you should be of opinion that the verdict was proper: then what does it find? It finds, that at the conquest of the island there was no law authorizing torture. Then, how can it be a question, whether there was a defensor, or whether the girl was of age? If the verdict was right, these questions cannot belong to the case.

Mr. Justice *Lawrence*.—The question is, whether there ought to be a new trial? As to these things, they furnish no defence; they proceed upon an admission that the verdict was wrong, because the questions cannot arise except on the supposition that the law did exist.

Mr. *Dallas*.—Then can the verdict stand? It is one thing to have general Picton convicted of enforcing a law which was put an end to by the operation of the British arms, and another to have him convicted of acting upon a law that never existed.

Mr. Justice *Le Blanc*.—I understand your complaint is, that by this finding you are prevented from having the benefit of the question in the form you wished.

Mr. *Dallas*.—I therefore submit, whether, with respect to the single question of fact that was left to the jury, enough has not since appeared to make a reconsideration of the case necessary.

Lord *Ellenborough*.—We wish to hear you on the other points.

Mr. *Dallas*.—My lords, I do not state this from any wish to withdraw from the other parts of the case. Some time or other the discussion of them must arise. I have fully thought upon and considered the subject, and I never can be better prepared than I am now to enter upon it. I shall be happy to have the inquiry proceed to its utmost length. I was only anxious, that I should not be supposed to have made any surrender of the interests of general Picton, and that he should not, by the finding of what now turns out not to have been the fact, be called upon by anticipation for that defence, which ought only to be required and made when the fact has been established. I shall now proceed to the consideration of the other parts of the case.

The next part of the case which occurs for discussion is, the great and important proposition on which the gentlemen on the other side so much rely; and for the discussion of this part of the case it must be taken for granted that, at the time of the cession of the island, torture was part of the law, for the question is, *Whether by the cession it ceased to be law?* They contend, that whatever was the law of the island before the cession, yet that by the law and the principles of the British constitution, it ceased to be law when the island was ceded to Great Britain. And al-

though his majesty, in the exercise of his prerogative, being intitled to make peace on such conditions as he thinks fit, has thought fit to make it the subject of an express command to his governor, that the ancient laws of the island should be preserved; and though it is admitted, for the sake of the argument, that torture is part of the law of the island, yet it is insisted, that his majesty's command was not grounded on justice, that he had no right to enforce it, and that his representative, the governor, was not competent to carry it into effect. Before I enter into the consideration of this novel and extensive proposition, and which is now for the first time agitated, I must premise, that I do not think it necessary for me to engage in any discussion as to the moral fitness of such a practice as torture being established by the law of any country. It is perfectly well-known, that the most enlightened and civilized nations have, whether properly or not, borrowed from each other and adopted the practice of torture as part of the criminal code, with a view to the detection of guilt and the protection of innocence. It is a practice taken from that great nation, of which it has truly been said, that she continues to reign by her reason, long after she has ceased to rule by her authority. Whatever, therefore, may be said of the propriety or moral fitness of the law, this forms no part of our consideration at present. The only question is whether it was the law of this particular island, and if it was, whatever might have been the feelings and inclinations of the mind and judgment of general Picton, he was no more at liberty to substitute his feelings or his inclinations in the place of the law, than your lordships would have been, some years back, to have refrained from ordering a person back to prison, to undergo cruelties of the worst description,—to be pressed to death,—because he might have refused to say whether he was innocent or guilty, because instead of saying that he was guilty, if he was not inclined to maintain his innocence, he might have refused to say any thing. Let it not be said, that I am drawing an argument from ancient times, or from obsolete laws. No longer ago than the beginning of the last century, on occasion of the Union, when torture was abolished in Scotland, there was an exception as to England, in order that this practice might not be abolished in this part of the United Kingdom. [See stat. 7 Ann. c. 21, s. 5.] It is well-known, and if you look into the books it will be found, that the practice I am alluding to continued after the Union. It is stated, in Barrington's Observations on the Statutes, * that this sentence of pressing persons who on their arraignment stood mute, was carried into execution in the reign of queen Anne, and in the beginning of the reign of George the 2nd; and even since,† on

the circuit where Mr. Garrow practises, with so much advantage to his clients, a person underwent the *peine forte et dure* for refusing to plead to an indictment. I will not flatter the living at the expense of the dead, and I am therefore bound to presume, that the learned judges, who pronounced those sentences, had as much feeling and as much humanity, as the judges who adorn the bench at the present day. Whatever their feelings were, they undoubtedly found themselves precisely in the situation in which general Picton was placed. They found the sort of torture of which I am speaking to be part of the law of the land, and they were bound to administer it; they could not substitute their own feelings and opinions in favour of a milder punishment.

Again, I must protest against being drawn into a consideration of the fitness of the law. I desire to confine myself solely to the question, whether it *was the law*? If it was the law, there was nothing left for the consideration of the judge: he was bound to enforce it.

Lord Ellenborough.—General Picton had a discretion on the subject.

Mr. Dallas.—I shall contend, that the obligation on a judge to enforce the law leaves him no discretion. Having stated thus much, I shall proceed to examine on what ground it is contended that, by the cession of the island, that which had theretofore been the law, ceased to be law thereafter; and the general doctrines as to cases of this sort lie within a very narrow compass.

For the purpose of my argument, I am content to have recourse to no other authorities than what have been introduced by my learned friend, Mr. Nolan. The doctrines of the law, as particularized, are in substance these. It is admitted, that in the case of an hitherto-undiscovered country, those who discover it carry with them the laws of their own country, and for this plain reason, that no other laws than the laws of their own country can apply. In the case of a conquered country, the terms of capitulation constitute the compact between the victor and the vanquished, and those terms the victor is pledged and bound to observe. In the case of a country surrendering at discretion, it is laid down, that his majesty has a right to impose what terms he thinks fit. He may continue the ancient laws, or he may abridge them, or he may annihilate them altogether: whenever he becomes, by right of conquest, the sovereign of a new dominion, it is the undoubted right of his prerogative to impose whatever system of law he thinks fit. I state this as the doctrine contained in the authorities which Mr. Nolan has adduced.

The first authority stated by Mr. Nolan was from lord Coke (Calvin's case). I will pass over that part which says that all infidels are *perpetui inimici*, for that the law presumes

* P. 82. note d. † Ibid. p. 86.

not that they will be converted. * The plea is reprobated by Mr. Justice Gould, in *Fabrigas and Mostyn*†; and by lord Mansfield, in *Hall and Campbell*.‡ Lord Coke goes on to say, "Upon this ground there is a diversity between a conquest of a kingdom of a Christian king, and the conquest of a kingdom of an Infidel; for if a king come to a Christian kingdom by conquest, seeing that he hath *vita et necis potestatem* he may, at his pleasure, alter and change the laws of that kingdom; but until he doth make an alteration of those laws, the ancient laws of that kingdom remain. But if a Christian king should conquer the kingdom of an Infidel, and bring them under his subjection; there, *ipso facto*, the laws of the Infidel are abrogated; for that they be not only against Christianity, but against the law of God." It is here laid down, that in all cases where the king of any country comes to the dominion of any other country by right of conquest, he has a right to alter the laws partially, or to change them altogether; but that, until he does alter or change them, they remain as they were before the conquest. The only exception to this is, unless the laws of the conquered country are contrary to the law of God; but in point of reason, this was an exception which need not have been mentioned. In every other case it is laid down by lord Coke, that the king may, at pleasure, alter the laws of the conquered kingdom or country. But this is not a case in which we need resort to books of common law, we may find sufficient for the argument in books of moral philosophy and ethics. It is put by Dr. Paley, with respect to a case of slavery, that the king may make slaves of those, whom by the right of conquest he may put to death: therefore, I take it to be clear, according to the first authority stated by Mr. Nolan, that it is the undoubted prerogative of the crown to continue, in every particular, to any conquered country the ancient law by which it had theretofore been governed.

The next authority stated by Mr. Nolan is from 2 Peere Williams, 75. It purports to be a memorandum by the master of the rolls of what had been determined by the lords of the privy council, upon an appeal to the king in council from the foreign plantations. "First, that if there be a new and uninhabited country found out by English subjects, as the law is the birth-right of every subject, so wherever they go they carry with them their laws, and therefore such new found country is to be governed by the laws of England, though after such country is inhabited by the English, acts of parliament made in England, without naming the foreign plantations, will not bind them: for which reason it has been determined, that the

statute of frauds and perjuries, which requires three witnesses, and that they should subscribe in the testator's presence in the case of a devise of land, does not bind Barbadoes. Secondly, where the king of England conquers a country it is a different consideration, for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people; in consequence of which he may impose upon them what laws he pleases. But, thirdly, until such laws are given by the conquering prince, the laws and customs of the conquered country shall hold place, unless where they are contrary to our religion, or enact any thing which is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail."—Now in this case his majesty has thought fit expressly to order that the ancient laws of the island, of which the law of torture was a part, shall continue in force; therefore, under the general direction to continue the laws, he directs that the law of torture shall be continued, unless it is to be contended that there is some limitation on the royal prerogative, which prevents its extending to the maintenance of that law.

The same doctrine is laid down in the case of *Campbell and Hall*. The words of lord Mansfield are these: "A country conquered by the British arms becomes a dominion of the king, in the right of his crown, and therefore necessarily subject to the legislature." And then he states, "that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives." *

Here it was put by Mr. Nolan: "What, then, do you mean to say, that if any subject of Great Britain went to Trinidad, he would be liable to torture?"—I say, most undoubtedly he would be. He need not go there unless he pleases; he may refrain from going there; but if he does go there, I admit plainly and roundly, that my argument is, that there can be no distinction between him and a native; all persons, under the dominion of the law, standing precisely on the same footing.

Lord Mansfield then states, "That the laws of a conquered country continue in force until they are altered by the conqueror. The absurd exception as to Pagans, mentioned in Calvin's case, shows the universality and antiquity of the maxim; for that distinction could not exist before the Christian era; and, in all probability, arose from the mad enthusiasm of the crusades. In the present case the capitulation expressly pro-

* 7 Co. Rep. 17.

† 20 Howell's State Trials, 162.

‡ Cowper, 209.

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* Cowper, 208.

vides and agrees, that they shall continue to be governed by their own laws, until his majesty's farther pleasure be known." *

Then, in another part, he says, "It is left by the constitution to the king's authority to grant or refuse a capitulation." —Here he puts the instance of his acquiring a right over the lives of the conquered people. If the king refuses to grant a capitulation (which he may do) he may take the lives of those who are disposed to capitulate, and if he puts the inhabitants to the sword, all the lands belong to him. "If he receives the inhabitants under his protection, and grants them their property, he has a power to fix such terms and conditions as he thinks proper." This being the law of England, it is now stated for the first time, that there is something in that law restrictive of the king's prerogative. I beg to know whether these cases do not establish the proposition, that the king may continue the ancient law of a conquered country? And where is it to be found that there is any restriction on the crown? But it is said, though the king has ordered that the laws should continue as they were before, yet by some mystical effect of the laws of England, of which those who are foreigners can know nothing, after a stipulation that they are to retain their former laws, you are to turn round and say: "No! the king cannot continue the law, if torture is a part of the law which he stipulated should be continued." I maintain that the operation of all these general authorities which I have mentioned, is the other way.

Without dwelling longer than is necessary on this part of the case, I will admit that no argument could be conducted with greater ability than Mr. Nolan's was. He displayed, certainly, deep research. I do not object to the introduction of these topics: it was proper to endeavour to throw light on every part of the subject; but can it be said, that in any one of these cases the questions he has introduced entered into consideration? The inference to be drawn from them is, I think, directly the contrary.

I shall now pass on from the examination of the general principles drawn from the cases with respect to ceded countries, to the particular authorities that are drawn from the law of England itself. The first is that in Fortescue *De Laudibus Legum Angliæ*; the manner in which this subject is introduced by judge Fortescue is somewhat singular. If you look at the conclusion of the chapter,† before he enters upon the subject of torture, you will find that he reminds the prince that he is speaking of a person of the name of John Fringe, who having taken priest's orders, and being afterwards tired of the profession, procured two persons to swear that they had been present at his marriage: then he re-

minds the prince, that this priest confessed that these persons were suborned to commit perjury, and he states this to shew the danger of relying too much on the testimony of witnesses; and then he goes on to state* that, with a view to avoid this inconvenience, and out of too much care and caution, the law of France is, that no person shall suffer, except by a discovery of the facts by torture; and thus it is, by contrasting the law of France with the law of England, that he introduces the subject, putting it that the law of England differs from that of France in this respect. He is speaking of the law of England as it stands in opposition to the general law, giving the former the preference.

The next authority is that of lord Coke—a very bad authority on this subject; for what authority can be drawn from any thing stated by my lord Coke on the subject of torture? No man knows better than Mr. Nolan does, what was said by lord Coke upon the trial of the earl of Essex; lord Coke made it a matter of reproach to the queen, that she had never tortured any man for the discovery of the truth. He says, "I think her overmuch clemency to some turneth to overmuch cruelty for herself; for though the rebellious attempts were so exceedingly heinous, yet out of her princely mercy no man was racked, tortured, or pressed to speak any thing further than of their own accord and willing minds."† This is the language of lord Coke on the trial of the earl of Essex. In the countess of Shrewsbury's case,‡ one of the resolutions is that peeresses are not liable to torture. The passage was not then understood in the sense it is now; but it was an admission by lord Coke, that, by law, torture was applicable. I come now to the particular passage cited from lord Coke. It is in the third institute, chap. 2, page 35. He is examining when, and by whom, the rack or brake was first brought into the Tower. He states, that the duke of Exeter and William de la Pole, duke of Suffolk, and others, intended to have brought in the civil law; for beginning whereof the duke of Exeter, being constable of the Tower, first brought into the Tower the rack or brake, allowed in many cases by the civil law, and thereupon the rack was called the duke of Exeter's daughter. He then refers to the passage in Fortescue, and observes, that there is no law to warrant torture in this island. Why? Because it is contrary to the law of God? Because it never can be resorted to on any principle of justice? No; but because it never can be justified by any prescription, being so lately brought in. The opinion of lord Coke is confined to the circumstance of torture not being the law of England. The law of England consists of two parts; the written and unwritten law. The positive

* Cowper, 209.

† Chap. 21.

* Chap. 22.

† 1 Howell's State Trials, 1338.

‡ 12 Rep. 94.

statutes do not direct torture: the other law is founded on prescription; the custom of England constitutes the unwritten law: and therefore lord Coke says, that torture being of modern introduction, and there being no prescription to justify it, torture cannot consequently be applicable as a method to discover truth. The doctrine of lord Coke is confined to England; but lord Coke never meant to say, that in a country where the civil law is established, it would not be applicable. He does not say, that the prescription which would constitute law if it existed in England, would not justify torture in England; but still less does he say, that in a country where civil law is established, torture, which is a part of it, would be virtually abolished by that country becoming subject to Great Britain. The authority of lord Coke, instead of proving what is attempted to be deduced from it, proves the contrary.

The next authority is the case mentioned in Blackstone's Commentaries—that of Felton, for the murder of the duke of Buckingham. I will read the correct account of this case, as I find it in Rushworth: * “Afterwards Felton was called before the council, where he confessed much concerning his inducement to the murder. The council much pressed him to confess who set him on to do such a bloody act, and if the Puritans had no hand therein. He denied they had, and so he did to the last, that no person whatsoever knew any thing of his intention or purpose to kill the duke; that he revealed it to none living: Doctor Laud, bishop of London, being then at the council-table, told him, if he would not confess he must go to the rack. Felton replied, if it must be so he could not tell whom he might nominate in the extremity of torture, and if what he should say then must go for truth, he could not tell whether his lordship (meaning the bishop of London) or which of their lordships he might name, for torture might draw unexpected things from him. After this he was asked no more questions, but sent back to prison. The council then fell into debate, whether by the law of the land they could justify the putting him to the rack. The king being at the council said, before any such thing be done, let the advice of the judges be had thereon, whether it be legal or no: and afterwards his majesty, on the 13th November 4 Car., propounded the question to sir T. Richardson, lord chief justice of the Common Pleas, to be propounded to all the justices, viz. Felton, now a prisoner in the Tower, having confessed that he killed the duke of Buckingham, and said he was induced to this partly for private displeasure, and partly by reason of a remonstrance in parliament, having also read some books which he said defended that it was lawful to kill an enemy to the republic; the question there-

fore is, whether by the law he might not be racked, and whether there were any law against it? for, said the king, if it might be done by law, he would not use his prerogative in this point. And having put this question to the lord chief justice, the king commanded him to demand the resolutions of all the judges.” “And on the 14th of November all the judges being assembled at Serjeants' Inn, in Fleet-street, agreed in one, that he ought not by the law to be tortured by the rack, for no such punishment is known or allowed by our law.” A point on which I never have raised any doubt.

Undoubtedly the punishment of torture is not known to our law; but the question would have been very different, if the civil law had ever been introduced into England.

The answer of the judges is confined to the case put, and very properly is, that by the law of England no such punishment as torture can be allowed. It seems to me, then, as far as the authorities go, that not one of them touches the question. They appear to be cases in which the consideration is confined to the custom of England, and there being no such custom in England there can be no such law. But, independent of these authorities, the gentlemen on the other side contend, that on general grounds and principles, the abolition of torture must be understood, whatever were the terms of the capitulation which has taken place. I do not think Mr. Garrow referred us to any decided case, much less to the positive enactment of any statute; but he contented himself with stating what he deemed a parallel case. “There can,” said he, “be no such thing as slavery in England. The moment a slave puts his foot on English ground, he becomes free.” I admit it, I admit that the case is parallel, and it leads to this conclusion—there can be no such thing as torture in England. But in order to make it applicable to his argument, Mr. Garrow must push his doctrine to this extent, viz. that because there is no torture in England there can be no torture in any other country;—he must contend, that because slavery cannot exist in England, therefore slavery cannot exist in the colonies. If his doctrine, that because there is no torture in England there can be no torture in a colony subject to England, could prevail, it would have this effect: according to my learned friend's analogy, if by force of arms any foreign dominion has been acquired, for instance, St. Lucie, Martinique, or any other colony, it would follow, that because there was no slavery in England, there could be none in those colonies. If it were true, that because there is no torture in England there can be no torture in Trinidad, the doctrine and the principle on which it is founded, would let loose all the slaves in every island that ever was acquired by force of British arms. It seems to me, that the argument built upon my learned friend's apology tends

* Rush. Coll. 635.

the other way, and is against himself. "There can be no such thing," says my learned friend, "as slavery in England, but there may be such a thing as slavery in the colonies," and I say, in like manner, though there can be no such a thing as torture in England, there may be in the colonies. His illustration establishes nothing for himself, but is directly at variance with what it is meant to support.

Upon the authorities stated by Mr. Nolan I have already observed. I admit that there is one case, in which the doctrine has been laid down, that whatever may have been the law of the conquered country, it ceases from the moment it becomes subject to Great Britain.* I am far from wishing to speak otherwise than with reverence, of the enlightened and learned person who gave that opinion in the case of *Fabrigas versus Mostyn*. I know that, as the opinion of lord chief justice De Grey, it is entitled to great weight; but I hope I shall not be told, that the opinion of any judge, extrajudicially given, without any argument, is to decide a question of such great public importance as this is.

This is the only authority in favour of my learned friends that can be brought to bear upon the question, and I must admit that I am not able to distinguish it from the present case. I admit that, as far as it goes, it is the opinion of chief justice De Grey; but it is the opinion of the learned judge on a question which was not judicially before him. And is there no authority on the other side? There is an authority of the greatest weight. It is well known, that up to the time of the Union between England and Scotland, as the civil law constituted the law of Scotland torture, as a part of that law, was frequently applied. In bishop Burnet's History of his own Time, instances of torture having been applied are mentioned. Will the gentlemen on the other side contend, that torture having been part of the law of Scotland, ceased in consequence of the Union? They must admit that it did not, or they must assert that it did. If they admit that it did not, there is an end of the argument; if they assert that it did, I will refute them by the authority of the legislature itself. In the Articles of Union there is no provision with respect to torture, I mean in the act passed in 1706; but in 1708, in the act† which passed for giving to Scotland several provisions in cases of high treason, there is an express provision, that from and after a future day—What? Torture shall cease in Scotland; thereby admitting, by a legislative declaration, that under the stipulations of the Act of Union, torture continued for a considerable period to be part of the law of Scotland, and any Englishman going into Scotland would have been liable to the opera-

tion of that law. It was suffered to continue prospectively; for, instead of the act reciting that torture is contrary to the law of God, it does not even declare that it was abolished, but, on the contrary, it continues it up to a future time, up to a day in the succeeding year; and therefore, in opposition to the mere dictum of a single judge, I stand upon the broad ground of a legislative declaration, which proves that torture was the law of Scotland after the union with England, and that it would have continued so to the present time, had it not been expressly abolished by statute; and it is a curious circumstance, that upon the subject of the *peine forte et dure*, there is a saving in the act in favour of this mode of punishment used in England, lest it should be abolished.

Then, my lords, as to this great constitutional question, which is as grave and important a question as ever was agitated, I ask whether you can think it fitting, that it should be decided on a motion for a new trial? I can only submit to your lordships that the authorities which have been cited on the other side, do not touch the question; and that, with the exception of lord chief justice De Grey's opinion, there is not a single authority which is not in my favour. In opposition to that dictum, I have stated to you a legislative authority, by which torture had been permitted to continue, and by which it was expressly abolished.

I have thus gone through all that I desired to state on this part of the case, namely, the question of the abolition of torture by the cession of the island; and I now come to the grand and main question on which I obtained the rule,—a question which, with respect to general Picton, is of more importance than any other part of the case; for if I am right on this point, whatever your lordships' opinions may be on any other, it is quite impossible that general Picton can be convicted on a second trial. I will, for the purpose of the argument only, concede to the gentlemen on the other side, that I am perfectly mistaken in all I have hitherto endeavoured to maintain,—

Lord Ellenborough.—I am obliged to go to Guildhall presently, where there are a number of causes standing for trial; I should be sorry not to hear you go through your new head of argument at one and the same time, and I therefore think you had better pause here.

Mr. Dallas.—It is certainly a very extensive subject, and I am afraid will occupy a considerable portion of the attention of the Court. It is, how far general Picton was excusable, as acting in a judicial capacity.

[The argument accordingly stood over till a future day.]

Thursday, 4th February, 1808.

Mr. Dallas.—When your lordships last ad-

* 20 Howell's State Trials 181.

† 7 Ann, c. 21.

journe'd the consideration of this question, I was about to enter upon the second ground on which I originally obtained the rule for a new trial, viz. that supposing the defendant to have acted illegally, but not maliciously, in respect to the act done and complained of, yet that act having been done in the course of his judicial duty, he is not liable to a civil action, much less to a criminal prosecution.

In order to let in this head of argument, it is necessary that I should concede to the gentlemen on the other side one of the two propositions which they have maintained. Both I cannot admit, for they are inconsistent; but the one or the other will serve their purpose.

It must be taken for the purposes of the present argument, that no law authorizing torture existed at the time of the cession of the island, or that if it had existed, it ceased by the operation of the English law, and what is called "the principles of the British constitution." The question will then depend on the *illegality* of the act done, an act which is alleged not only to have been *unlawful*, but *malicious*. On the other hand, it must be conceded to me, that—whether the defendant had or had not jurisdiction (which I shall examine), or whether he judged right or wrong,—it was a question of law, to be decided by the competent tribunal, whether by the existing law of Spain at the time of the capture of the island, torture was applicable, and that this was a question that could only be decided by the Spanish law. In order to resolve it one way or the other, it would be necessary to refer to those books which formed the guides in Spanish courts of justice; and in order to determine the second question, *i. e.* whether it ceased, that must have been there made a question to be decided by the proper tribunal, as it is made here a question of law for your consideration. All I desire to assume is, whether he had jurisdiction or whether he had not, whether he decided properly or erroneously, still that this was a question of law for the proper tribunal to determine. The question then will arise, whether (supposing the decision to have been made by a competent jurisdiction, which I assume, even though it should turn out to have been unlawful) it is not necessary that there should have been malice. The learned gentlemen on the other side admit that they did not contend, either at the trial or since, that there is any evidence of actual malice; and indeed all the circumstances of the case, independent of their direct admission, preclude the possibility of such a supposition.

The prosecutrix is an obscure person, in the lowest rank of life (but not on that account the less entitled to the protection of the law, for the law knows no distinction between the high and the low), a person who, from her humble situation, was not likely to have become obnoxious to persons in power, and least of all to the individual at the head of

the government. She was charged with a capital offence, was taken before general Picton, was committed to take her trial, and the cognizance of the case was referred to the magistrate of ordinary and competent jurisdiction, without any objection being made. In the course of the investigation before the ordinary judge, it seemed to him, that with a view to ascertain her accomplices, and in order to discover a very great sum of money, it might be desirable to inflict a slight torture upon her, she having confessed her own guilt; and in consequence of that he transmitted to general Picton a representation of the case, stating that it was not competent for him to administer torture without the sanction of the superior judge, and submitting to him that this was a case in which torture would be properly applied. Upon receiving this representation, all that general Picton did, was, to assent to the proposal; and all the knowledge he has of the circumstances subsequent to that proceeding, is what he has learnt in consequence of the proceedings which have taken place in this court.

This then is a case in which all the facts preclude malice. But it is said, that express malice is not necessary to be proved; for though the indictment charges the act to have been maliciously done, yet malice is a legal inference from the illegality of the act, and therefore it is not necessary that there should be any proof of express malice, for the moment the act is proved to be unlawful, the law will imply malice. In support of this doctrine we have been referred by Mr. Nolan to the case of the King against Woodfall, 5 Burr. 2666, in which lord Mansfield is reported to have said, that malice is an inference of law, and that there is no necessity for any evidence of express malice; and I admit that, in consequence of a great many decisions and an accumulation of precedents, the direction given by that learned judge was the only one that could *then* be given; but I was surprised to hear Mr. Nolan cite that case at the present day as applicable to any subsequent case; for so repugnant was the doctrine to the common feelings of mankind (I do not mean to the superficial observer, but to the most enlightened men of the age*), that Mr. Nolan well knows, that within fifteen years an act† passed to put an end to any such doctrine or practice, and to make juries competent to take into consideration the whole matter in issue between the crown and the accused, to exercise their judgment with respect to the intention of the defendant, and to acquit or condemn, on a full consideration of the whole matter, as they should think the defendant innocent or guilty. Therefore the only use that can be made of this case is adverse to the proposition, in support of which it is in-

* But see the protest against the Libel bill in the first Volume of this Continuation, p. 306.

† 32 Geo. 3, c. 60.

roduced; for it shows, that when the doctrine did prevail, it was so unsupported by any principle of reason that the legislature felt it incumbent on them entirely to put an end to all such practice in future.

On looking more closely into this case, I find it gives me all the ground on which I wish to stand in arguing the present question. The doctrine imputed to lord Mansfield is, that malice may be implied from the unlawfulness of the act; and to that I do not object. I admit, that where an act is unlawful, it is fair to imply that it was done with an evil purpose. *It may or may not be so, but such is the inference of law: but it is inference only,* and the point I am contending for is, that supposing malice might have been inferred, still it was competent to general Picton to overturn that inference, by substantiating a defence which would be an answer in law; and therefore I object to the verdict of the jury on the ground that they have found the defendant guilty, merely from the circumstance of the act being unlawfully done. The passage, which will be found in the case of the King against Woodfall, I will state in the words of the report. Lord Mansfield says: "I told the jury (as I have from indispensable duty been obliged to tell every jury, upon every trial of this kind) that no proof of express malice ever was required, and in most cases is impossible to be given." Then he says, "that the verdict finds only what the law infers from the fact; therefore, after conviction, a defendant may, by affidavit, lessen the guilt."

I now come to the important part of the judgment of lord Mansfield, on which I mean to rely in support of my present application to the Court. The learned judge goes on to state, "that where an act in itself indifferent, if done with a particular intent, becomes criminal; there the intent must be proved and found: but where the act is in itself unlawful, the proof of justification or excuse lies on the defendant; and in failure thereof the law implies a criminal intent."* This is all I contend for. I admit that where the prosecutor has proved an unlawful act, the law will imply malice; that which must be implied, is equivalent to presumptive proof; but it is *implied only*, and the effect is merely to shift the burthen of proof from one party to the other; to take it from the prosecutor and impose it on the defendant, the law furnishing the prosecutor with a legal inference in his favour. But then lord Mansfield says, that it is competent to the defendant—to do what?—TO REBUT THE IMPLICATION OF MALICE BY GOING INTO HIS DEFENCE. All I require as the foundation of my argument is, that as the law implies malice, the case where the law does imply it, is a case in which the defendant ought to be allowed to set up that defence which will disprove it.

* 5 Burr. 2667.

Lord *Ellenborough*.—Can you repel the inference of malice, leaving the illegality of the act undisturbed?

Mr. *Dallas*.—All I mean to contend is this; conceding that the act was unlawfully done, still I submit that it was competent to general Picton to set up that which would be a defence to an unlawful act, as part of his defence against this charge.

I shall clearly show, in the course of the authorities I have to state, that there may be a defence to an unlawful act—the only defence that could be, where the law implies malice from the illegality of the act.

Lord *Ellenborough*.—I should like to know what is meant by "defence to an unlawful act." If you mean that that which is charged as unlawful may be shown not to be so, it is the constant practice, and would be an effectual defence; but if you mean, that admitting the act to be unlawful it can be *purged*, that I wish you to explain.

Mr. *Dallas*.—I am aware of the way in which your lordship puts the case. I mean to contend (and I shall submit a great number of authorities in support of my argument), that in the case of a person exercising a judicial authority, it is a defence that the act arraigned, though unlawful, was done in the exercise of his judicial functions; and I shall contend that it is competent for me to show that such, in the estimation of all persons conversant with the law of Spain, was the law of Spain.

Lord *Ellenborough*.—Then you mean to show, that the act done was not a crime; that it was not unlawfully done.

Mr. *Dallas*.—My proposition is this (and I mean to illustrate it by authorities), that, admitting the act to have been unlawfully done, still the moment it was shown to be done by a tribunal, having competent authority to judge of the law, on that ground the defendant ought to have been acquitted.

So much with respect to the only case stated by Mr. Nolan, who sets up the doctrine of lord Mansfield to show that, upon the mere proof of the illegality of an act, a defendant must be convicted. But I apprehend the distinction, in point of natural justice, to be perfectly clear and plain. The fundamental principle upon which I rely is, that no man in a public station, and upon whom a public duty is cast, ought to be found guilty and exposed to punishment, for a mere error; and though I admit that there are many cases which show that he may be civilly responsible, yet, in all those cases a distinction is taken between civil and criminal responsibility, and therefore, in this case, though the act was unlawful, yet if it was done from mere error of judgment general Picton is not liable to be convicted upon a criminal charge.

I find this doctrine plainly and distinctly laid down in one of the cases to which Mr. Nolan has referred, and laid down too by an authority to which I am sure the gentlemen on the other side will not object; I mean the authority of that learned judge, on whose *dictum* they rest the whole of their case—lord chief justice De Grey, who, in the case of *Millar and Seare*, lays down this proposition. It will be found in 2 Blackstone's Reports 1141. It was not an indictment, but it was an action of trespass and false imprisonment, against certain commissioners of bankrupts, for exceeding their authority, and the judge doubted whether the action would lie. That learned person begins his judgment with this fundamental proposition: "It is certain, that no man ought to suffer criminally for an error in judgment"—This is the main proposition on which I now desire to stand—"It is certain that no man ought to suffer criminally for an error in judgment; but it is equally just, that he should make reparation civilly for the damage that other persons have suffered by such his error." Here then is a broad and luminous line of distinction drawn by that able judge in the case referred to on the other side, between civil and criminal responsibility. He states what common reason and justice would suggest, that whatever may be the case as to civil responsibility, it is certain that no man ought to suffer criminally for an error in judgment.

I find the same doctrine laid down by lord Kenyon, in a case which is not printed, but of which a note has been furnished me by my learned friend, Mr. Scarlett. It is the case of the *King* against *Byrne*, 1799. This was an indictment for an assault and false imprisonment: it therefore imputed to the defendant an unlawful act, and the only question one would think, according to the doctrine contended for on the other side, would have been whether the fact was proved. Now let us see what is the doctrine of lord Kenyon upon this indictment.

"*Sittings at Guildhall, before Lord Kenyon, after Trinity Term, 1799.*

"*The KING v. BYRNE and others.*

"This was an indictment for an assault and false imprisonment on prosecutor. It appeared that the defendants having been informed of a robbery of the Mint and of the description of the person suspected, conceived that the prosecutor was the person, and one of them knowing him, they went in the night-time to his lodgings, took him from his bed, and carried him first to the marine police-office in Wapping, and afterwards, there being no justice there, to the house of a person who had given them the description.

"By him they were told, that the prosecutor was not the man, though he answered in every particular to the description, except in height, whereupon they discharged pro-

secutor. The defendants were police-officers, but had no warrant.

"Mr. *Erskine*, for the defendants, insisted that there was no ground for a criminal prosecution, though there might be ground for an action. He said, the distinction was this, that you may recover damages for the wrong you have suffered, however innocent the party might be who had inflicted it, but you cannot charge a man with a crime who had no sort of malice, nor any motive but that of doing his duty in the furtherance of justice, though he might be mistaken in what he had done.

"Lord *Kenyon* was of this opinion, and said, that though the case was not actually that of a *fresh pursuit* it was very like it, and directed an acquittal.—N. G.

"Mr. *Gibbs* was for the prosecution."

Mr. Justice *Lawrence*.—What! a person without authority taking up a man! is that no offence?

Lord *Ellenborough*.—Is that case to be taken as authority? Can lord Kenyon, or any judge, ever have said that a police officer, without authority, taking an innocent man out of his bed, though it should appear he was in error, shall be excused from criminal responsibility? What security would the subject have for his liberty, if that could be law? I hope there is no such case reported: I am quite sure the learned judge could never have so held.

Mr. *Dallas*.—I am not stating the case from any recollection of my own, but I am stating it from the note of a gentleman, of whose accuracy I should have more confidence than of my own.

Lord *Ellenborough*.—This is not a judicial error but the error of a common police officer. Is it to be said, that he is not to be criminally liable for taking up an innocent man without warrant? I do not know on what the security of the subject depends, if this can be justified.

Mr. *Dallas*.—I am not stating that he is not civilly responsible, but only that he is not responsible on a criminal charge. It does not seem to be denied, that if such a case was decided, it is applicable to the present question. Whether it was so decided, I am sure you will not, after the note from which I have stated it, conclude one way or the other. It can at a future time be capable of explanation: it can easily be ascertained, whether lord Kenyon did give that direction to the jury which appears in the note I have just read. But, subject to the opinion of the Court (whose correction, if I am mistaken, I am sure I feel as sensibly as any man can), I desire to be distinctly understood as maintaining the doctrine, that there are in the law of England many cases, which show that a man, acting from mere error, cannot be convicted upon a criminal charge. The fundamental proposition, independent of those cases, upon which

I mean to rely, is this: that where the law has imposed a public duty upon any man, or where there is an act to be done by him with reference to the public, and the law has not chalked out a rule for his conduct, whether it be in matter of fact or law, if it appear that he acted erroneously, and not maliciously, he is not liable to make compensation *even in a civil action*, and consequently that for a mistake in matter of law he cannot be liable to a criminal charge. With respect to civil cases, actions founded in malice I know are to be distinguished from cases in which the party has legal authority; but I am only showing, that in matters of fact, where a mistake is committed, the law will not hold the party liable even to make compensation in damages, unless the act is maliciously done. It is in this respect I apprehend (that is, in the motive with which the act is done), that the distinction exists between a common action of trespass, and an action founded in malice.

Lord *Ellenborough*.—You argue to the extent, that every person acting in the supposed discharge of a public duty, if he act illegally, but from mere error, is not liable to be indicted?

Mr. *Dallas*.—Yes, I do. The first case I put is the case of a mistake in matter of fact. In the common case of an action of trespass, the right to recover depends on the illegality of the act done; for the presumption is, that every man ought to know the law in his own case, and therefore as between two individuals, who are equally innocent, if the one has suffered damage by the act of the other, it is the rule that the one who his damnified shall receive compensation. But the rule becomes different in the case I am putting, where there is a public duty to be discharged, or an act to be done with reference to the public; and your lordships know very well that in all actions for a malicious prosecution—

Lord *Ellenborough*.—You do not, in laying down your proposition with such latitude, seem to recollect the case where an information was filed against persons for granting licences after the time for licencing had expired. The error was sanctioned by circumstances of the strongest excuse, but it was held distinctly, that having acted illegally, they were subject to a criminal information. The information went down, and was afterwards reluctantly abandoned.

Mr. Justice *Lawrence*.—There was also the case of the King against Sainsbury and another, in 4 T.R. 451. These cases seem very much to clash with the generality of your doctrine.

Mr. *Dallas*.—I shall come to them by-and-by, as exceptions.

I was stating, that in all actions for malicious prosecutions, though there should have been

no probable cause, the malice must be expressly made out; it is immaterial to the purpose, that if the charge be unreasonable, you must infer malice; in every case where it is the duty of a person to prosecute, if he should be mistaken, and the jury are not satisfied that it was maliciously done, the Court will not direct the jury to convict. Without going through all the cases, therefore, it would be enough to state, that the inference I mean to deduce from them universally, is, that wherever a person is in a situation in which he has some public duty to discharge, if it should turn out that he is mistaken in what he does, though there may be an action still that action will not lie unless the act is malicious.

I come now to a class of cases, which appear to me, from their nature, to connect themselves more closely with the present question. The first are actions against returning officers.

Now, your lordships know perfectly well, that whatever the doctrine of the present day may be, it was formerly held by the highest legal authority, that the situation of a returning officer was a judicial situation; and the question has arisen, whether, on that account, an action would lie against a returning officer. The first case (passing over the case of *Neville against Stroud*,* in which the Court came to no resolution) was the case of *Barnardiston and Soame*.† It was an action brought by sir Samuel Barnardiston against the sheriff of Suffolk. He had been a candidate to represent the county of Suffolk, and he had a majority of seventy-five votes; yet the sheriff thought fit to make a double return, and sir Samuel Barnardiston having been seated, this action was brought for the damages sustained. The declaration stated, that the sheriff did it maliciously: the defendant pleaded not guilty. Now here we have an action against a returning officer, confessedly standing in a judicial situation, and for an act confessedly wrongful; for the declaration charged the return to have been maliciously made, and in consequence of that, the jury gave a verdict for the plaintiff, with 800*l.* damages. A motion was afterwards made by the defendant's counsel in arrest of judgment, on the ground that the action would not lie; the reasons they urged were, that the question was only examinable in the House of Commons; and that what the sheriff did he did as judge (which is what I am contending for), for he is judge of the election, and therefore no action lies against him.

To which it was answered by the other side, that here was malice and falsity in the sheriff, and thereby damage and charge to the plaintiff; and in reply to the other objection, that the sheriff was not a judge, but a mere minister to take the poll, of which, in point of regula-

* 2 Sid. 168.

† 2 Levinz 114.

rity, the House of Commons was judge. Now, to go by steps :—the argument on one side is, that an action will not lie against a sheriff for a wrongful act, though maliciously done, because he is a judge. It is met in this way :—no, he is not a judge (*which admits that if he was a judge the action would not lie*), but a minister to take the poll, of which, in point of regularity, the House of Commons is judge, to which body it is his duty to refer it.

This motion stood over till the next term, “when Hale being in court, he, Twysden and Wylde; forasmuch as the return is said to be *falso et malitiosè, et cã intentione*, to put the plaintiff to charge and expense, and so found by the jury, held the action lay, and gave judgment for the plaintiff, Rainsford doubting. Upon this, a writ of error was brought in the exchequer chamber,” where by North chief justice and five other judges, against two, the judgment was reversed upon the matter in law, that the action lies not.

Now here, in the court below, in the instance of a returning officer doing an act found to have been malicious, the only foundation of the judgment was, that inasmuch as malice was charged, and malice found by the jury, for that reason the action was properly brought; thereby admitting that, if the malice had not been charged or found, the returning officer would not have been liable. The judgment in the court below was, that this action was properly brought; but it is stated, that on that judgment there was a writ of error in the exchequer chamber, where it was reversed, and that upon that reversal there was a writ of error in parliament. Your lordship will find the proceedings reported much at length, in 7 Hargr. State Trials, 439. I have extracted as much as it is material for me to state to the Court.

Sir William Ellis was for affirming the judgment below; first, on the ground of falsity and malice, and secondly, that the sheriff was a *ministerial* and not a *judicial* officer;* so that the opinion of Judge Ellis was, that in a case where malice was found, the action could be maintained; of course admitting, that if malice had not been found, the action would not lie; but, in addition to that, stating that the sheriff was a *ministerial* officer, and therefore admitting, that if he had been a *judicial* officer the action would not lie. Sir Robert Atkyns was for affirming the judgment, on the general ground that the law gave an action where there was damage.

The argument of lord-chief-justice North against the action is in these words: “No action will lie against a judge for what he does judicially, though it should be laid *falsò*,

* This is a mistake; that the sheriff was a ministerial and not a judicial officer was stated by sir Robert Atkyns, and not by sir W. Ellis *Vide* 6 Howell’s State Trials, 1090.

malitiosè et scientèr; as appears in 12 Rep., fol. 24. They who are entrusted to judge ought to be free from vexation, that they may determine without fear; the law requires courage in a judge, and therefore the law provides security for the support of that courage.” “The arguments urged on the other side related either to the ingredients or circumstances of this action, or to the foundation or substance of it. I call the ingredients and circumstances of the action, that it is laid with these words *falsò, malitiosè, deceptivè, et scientèr*; and that there is a verdict in this case, and damages are found. The words *falsò, malitiosè et deceptivè*, will sometimes make a thing actionable which is not so in itself, without malice proved, though there be the same damage to the party. As where a man causes another to be falsely indicted, yet if it be not *malitiosè*, no action lies; though there be the same trouble, charge, and damage in the one case as in the other. But it is only where a man is a voluntary agent; for if a man be compellable to act, you cannot molest him upon any averment of malice;”—This is exactly the point for which I am contending, for general Picton was compelled to act; and being compelled to act, you cannot molest him on an averment of malice;—“As if a grand-juryman causes another to be indicted, though you aver malice, you cannot have an action against him. So for a witness that doth testify, or a judge that judgeth.” He then says, “The sheriff is compellable to act, and not barely as a minister to send the indenture, but as a judge, to say which is the major part of the due electors; and if he mistakes, there is no reason it should subject him to an action upon an artificial averment of malice.” He winds up his argument by saying, “As for the rule they go upon, that where falsity, malice, and damage do concur, there must be a remedy, I confess it is true, generally, but not universally; for it holds not in the case of a judge, nor an indictor, nor a witness, nor of words that import not legal slander, though they are found to bring damage, as I have shown before; and the reasons that exempt these cases from the general rule have the same force in the case at bar.” And accordingly the judgment was reversed. Vaughan C. J. and Turner C. B., were of the same opinion.

Mr. Justice Lawrence.—Is this argument taken from the State Trials?

Mr. Dallas.—Yes; from the seventh volume of Mr. Hargrave’s edition.

Eleven years after this case, there was another of the same sort: that of Onslow v. the Bailiff of Haslemere.* These cases, I submit, show that the sheriff was considered a judicial officer, and as such was not liable for any act done by him in the execution of his office.

* 33 Car. 2, 2 Vent. 37, 3 Lev. 29, S.C.
3 E

Lord *Ellenborough*.—Are you aware of a case, in which lord Kenyon puts an instance, which clearly shows that he did not consider a sheriff to be a *judicial* officer, but merely a *ministerial* one? In delivering his judgment in the case of *Schinotti* against *Bumsted* and others, * lord Kenyon observes: "It might at least be said with as much reason, that a sheriff in returning members to parliament is a judge; and though in *Ashby v. White*, 2 lord Raym. 943, 950, Mr. Justice Powys said that the sheriff was *quod* a judge, lord Holt C. J. said, he was neither a judge, nor any thing like a judge." †

Mr. *Dallas*.—I began by stating, that formerly, in the opinion of the highest authorities, the sheriff was considered as a judge. I admitted in the course of my argument, that the sheriff is not, at this day, considered as a judge, and therefore to what is stated by lord Kenyon, in the case your lordship has cited, I perfectly accede.

At the time to which I am referring, the sheriff, whether properly or improperly, was considered as a judge, and it was held that no action would lie against him for acts done in his official capacity, *because he was a judge*. It will be material to attend to what took place in consequence of this decision. The various classes of returning officers were very numerous, and it seemed that no action would lie against them, for any act, even though maliciously done. The cases which had been decided constituted the law, and therefore an act of parliament to apply a remedy to what was felt to be a very great inconvenience became necessary. The act of 7 and 8 William 3rd was passed, which gave an action against the returning officer for a false return; and I point out this to show, that in this instance in which the legislature was condemning the doctrine of the courts of law, they did, in the act which they passed to amend the law in future with respect to the returning officer, make him liable only for a return wilfully false, that is, maliciously false; for that which is wrongfully and knowingly done, is maliciously done: and when the legislature interposed, the only instance in which they gave a right of action, was where the returning officer should make a wilfully false return. This is all I am contending for. If I can assimilate the case of general Picton, to that of a returning officer (which I shall do), then all I am contending for is, that he would not be liable to an ac-

tion, for having done an act that was not wilful, and therefore not malicious.

Your lordships know perfectly well, that on this statute various actions have been brought. There was some years ago, in the Common Pleas, the case of *Sargeant v. Milward*. * The declaration alleged that the return was made falsely and maliciously, and the jury found it so, and there was a verdict for the plaintiff; but if the jury had found that the return, though falsely, was not maliciously made, the verdict must have been in favour of the defendant. In that case the defendant was proved to have acted maliciously, and there was a verdict against him for 200*l.*; there was a motion in arrest of judgment, but the defendant declined arguing it. There was a case on the western circuit, shortly after Mr. Justice Grose left it;—I mean the action against the returning officer of the borough of Saltash, *Drew v. Colton*, † in which the case of *Sargeant v. Milward* was brought forward. The action against the returning officer of the borough of Saltash was for refusing the vote of the plaintiff, a freeholder of a burgage tenement in the borough, at the election in 1786. The declaration was the same as in *Sargeant and Milward*. The case was tried by a special jury, before Mr. Justice Wilson. The counsel stated the history and constitution of the borough, deducing from thence the plaintiff's right to vote, but declared, at the same time, that he did not mean to charge the defendant with having acted from any malicious motive in his refusal to admit the vote. The defendant's counsel objected to the plaintiff's counsel proceeding with the evidence, after having admitted that the defendant had done nothing wilfully wrong, but had acted conformably to the usage of the last thirty years, and to three concurring decisions of election committees, and contended that the foundation of this action, and of all others against officers of the law in the execution of their duty, was a wilful and malicious misfeasance. The learned judge at first inclined to let the plaintiff proceed with his evidence; but, after a full hearing of all the counsel on both sides, he changed his opinion. He said, the statute of 7 and 8 William 3rd, chap. 7, which was made to prevent false returns, and gives an action to the party aggrieved, does not allow it to the candidate himself, unless the return be wilfully false; and it would be very inconsistent to suppose, when the party who is most interested in the act, and most injured by it, cannot recover damages, except it be wilful, that one much less aggrieved, and who has less interest in the same transaction, should yet be more favoured in the recovery of damages; and he mentioned, for this purpose, the case of general Burgoyne against Moss, the mayor of Preston, which

* 6 T. R. 649.

† See to the same purport the judgment of Lawrence J. *ibid.* But recently a contrary opinion has been strongly expressed at Nisi Prius, by Abbott C. J., in the case of *Cullen v. Morris*, 2 Stark. N. P. C. 587.

On this subject see also Heywood on County Elections, 472, 2nd edit.

* 2 Lud. on Elec. 243.

† 1 East 563. 2 Lud. 245, S. C.

was an action for a false return, tried before lord Bathurst; and the jury, being of opinion that, in the execution of his duty, he had acted according to the best of his judgment and not maliciously, gave a verdict for the defendant, to the satisfaction of the Court.

Now I should be glad to know, whether these are cases, in which it could have been contended that an indictment could have been maintained for acts that were not maliciously done. Mr. Justice Wilson also observed, that lord-chief-justice Holt, in the report of the case of *Ashby and White*, in the King's-bench, endeavours to establish a different opinion, viz. that the action lies generally for the mere obstruction of the right; but that the decision of the House of Lords upon the case was founded on a different principle, viz. the unlawfulness of the act; and that the same principle was enforced in the justification which the House of Lords published of their conduct, which it was supposed was drawn up by the chief justice himself. He said, that lord-chief-justice Holt stood single in this opinion; but, however, he would, in deference to the authority of so great a name, direct the question to be put upon the record in the form of a special verdict, in order to have it solemnly argued and determined, if the leading counsel (the present Justice Lawrence) for the plaintiff, would declare his own assent to the proposition of lord Holt, that the action could be maintained. It is then stated, that Lawrence sergeant, declining to pledge his opinion as to the point required, the plaintiff was nonsuited; and no steps were afterwards taken to set aside the nonsuit. Now all these are cases, in which in the instance of a returning officer, formerly considered as judicial, but now considered as ministerial, it is decided that he is not liable to an action for damage, unless he has acted maliciously; and if he is not liable to an action, *a fortiori*, he cannot be subject to a criminal prosecution.

I come next to a series of cases, which more closely connect themselves with the present, a distinction having been taken as to a returning officer being a ministerial and not a judicial officer; I allude to a class of cases, with respect to persons acting solely in a judicial capacity. The first is the well-known case of *Edward Bushell*, as reported in *Vaughan*. Two persons, of the names of *Penn* and *Mead*, had been indicted for a riotous assembly. It appeared they were guilty of the offence charged, and therefore the judge directed the jury on the evidence to convict them. The jury withdrew, returned, and found the defendants not guilty. The Court remonstrated, and sent them back; they returned again, and acquitted the defendants. The Court then did that for which they had no authority, and which by law they could not do, viz. put a fine upon them, and then on non-payment committed them; and

the question arose on the legality of this commitment—of this act so done by a judge in his official situation. The jurymen were brought before the Court of Common Pleas, by Habeas Corpus, and they were finally discharged; the Court holding that the judges of Oyer and Terminer had no right to commit, and that therefore the act was unlawfully done. We have here, therefore, an act unlawfully done by a person invested with judicial authority; and I will state those parts of the judgment which I mean to apply to the present case: "It hath been said, that *institutum est quod non inquiratur de discretionem judicis*: that the court of sessions in London is not to be looked upon as an inferior court, having all the judges commissioners: that the Court, having heard the evidence, it must be credited that the evidence given to the jury of the fact was clear, and not to be doubted. As for any such institution pretended, I know no such, nor believe any such, as it was applied to the present cause; but taking it in another, and in the true sense, I admit it for truth: that is, when the king hath constituted any man a judge under him, his ability, parts, fitness for his place, are not to be reflected on, censured, defamed, or vilified by any other person, being allowed and stamped with the king's approbation, to whom only it belongs to judge of the fitness of his ministers." And then he states, "If any man thinks that a person concerned in interest, by the judgment, action, or authority exercised upon his person or fortunes by a judge, must submit in all, or any of these, to the implied discretion and unerringness of his judge, without seeking such redress as the law allows him, it is a persuasion against common reason, the received law, and usage both of this kingdom, and almost all others." Then he says, "If a court, inferior or superior, hath given a false or erroneous judgment" (you will have the goodness to attend to this; Mr. Justice Vaughan makes a clear distinction): "if a court inferior or superior, hath given a false or erroneous judgment, is any thing more frequent than"—to do—what!—to reserve such judgments by writs of false judgment, of error, or appeals, according to the course of the kingdom?"

Lord Ellenborough.—He does not mean any such thing: he is referring to false judgment in a court not of record.

Mr. Dallas.—What I mean to say is, that he is distinguishing between erroneous and corrupt judgment.

Lord Ellenborough.—He is talking of superior and inferior courts. Error applies to the courts of record; false judgment to inferior courts.

Mr. Dallas.—Give me leave. His words are: "If a court, inferior or superior, hath

“given a false or erroneous judgment, is any thing more frequent than to reverse such judgments by writs of false judgment, of error, or appeals?” The next sentence is: “If they have given corrupt and dishonest judgments, they have, in all ages, been complained of to the king in the Star Chamber, or to the parliament.”

Lord *Ellenborough*.—The word “false” does not apply to the subject.

Mr. *Dallas*.—He then states: “I would know whether any thing is more common than for two men, students, barristers, or judges, to deduce contrary and opposite conclusions out of the same case in law? And is there any difference that two men should infer distinct conclusions from the same testimony? Is any thing more known than that the same author, and place in that author, is frequently urged to maintain contrary conclusions, and the decision hard which is in the right? Is any thing more frequent in the controversies of religion, than to press the same text for opposite tenets? How then comes it to pass, that two persons may not apprehend, with reason and honesty, what a witness or many say, to prove in the understanding of one plainly one thing, but in the apprehension of the other, clearly the contrary thing?” He puts this very instance of a judge, student, or barrister, out of the same cases in law deducing contrary conclusions, one of which must be erroneous; and then he asks,—where any men having done so, is it justice that “One of these should merit fine and imprisonment, because he doth that which he cannot otherwise do, preserving his oath and integrity?” Then he winds up his judgment by saying, “That the verdict of a jury and evidence of a witness are very different things, in the truth and falsehood of them: A witness swears but to what he hath heard or seen generally, or more largely to what has fallen under his senses: But a jurymen swears to what he can infer and conclude from the testimony of such witness, by the act and force of his understanding, to be the fact inquired after, which differs nothing in the reason, though much in the punishment, from what a judge, out of various cases considered by him, infers to be the law in the question before him.”

Lord *Ellenborough*.—The present is a case of error in exceeding the limits of the judge’s jurisdiction, not of error in a matter within his jurisdiction.

Mr. *Dallas*.—I stated, that I mean to prove it (if it be error) to be error within the limits of general Picton’s jurisdiction.

In consequence of this, the parties were discharged as unlawfully committed. The next account we find of the history of this proceeding is in an action of trespass and false

imprisonment, which was brought by some of the jury against the mayor and recorder of the city of London, founded on this unlawful commitment, and therefore it was an action which stood not on an abuse of authority, but on the illegality of the act. In 1 Mod., p. 119, I find a motion made by sir William Jones, in an action against the lord-mayor. One of the jury had brought an action against them for false imprisonment; and because the plea was long, he prayed that he might have time to plead. Hale chief-justice said: “I speak my mind freely, that the action will not lie; for a *Certiorari* and an *Habeas Corpus*, whereby the body and proceedings are removed hither, are in the nature of a Writ of Error; and in the case of an erroneous judgment by a judge, which is reversed by a Writ of Error, shall the party have an action of false imprisonment against the judge? No; nor against the officer neither. The *Habeas Corpus* and Writ of Error, though it doth make void the judgment, it doth not make the awarding of the process void to that purpose, and the matter was done in the course of justice. They will have but a cold business of it. The *Habeas Corpus* and *Certiorari* is a Writ of Right, the highest writ the party can bring.”—So a day was given to show cause. The question came on, therefore, in the first instance, on this action of false imprisonment, against the persons who committed the jury without authority: The first account we have of it is upon the motion for time to plead. It appears there was a motion for further time, in Trinity Term, 26th Charles 2nd. It is reported in p. 184, of the same book, Hamond v. Howell recorder of London, Maynard moved for the defendants, that they might have longer time to plead; for a rule had been made that they should plead the first day of the term: and the court declared their opinion, that no action would lie against a judge for a wrongful commitment, any more than for an erroneous judgment.

Lord *Ellenborough*.—No. They have a power to commit for contempt; but here they applied their power to wrong persons, under circumstances that did not make them the objects of it.

Mr. *Dallas*.—They acted without lawful authority. You will find a further report of the same case in 2 Mod., p. 218. The defendant’s counsel would not speak to the point, “whether a judge can fine a jury for giving a verdict contrary to evidence, since the case was so lately and solemnly resolved by all the judges of England, in *Bushell’s* case, that he could not fine a jury for so doing. But, admit a judge cannot fine a jury; yet if he do, no action will lie against him for so doing, because it is done as a judge.”—Now I apply this for the purpose of showing that no action or indictment will lie against a judge for an unlawful act in the

exercise of his office; though it will lie against other persons, it will not against a judge. I admit, for the sake of argument, the act done by general Picton to have been an unlawful act, but it was done by him as a judge; and then I apply the doctrine in this way, to show that for such unlawful act, no indictment will lie against a judge. The Court told the counsel "he need not labour this point, but desired to hear the argument on the other side, what could be said for the plaintiff." It was urged, that the action would lie, and the foundation was, that the act was unlawful; that what was done was not warranted by the commission, and therefore the defendant did not act as a judge. "And this difference has been taken and allowed, that in the case of an officer if the Court has jurisdiction of the case, no action will lie against him for doing what is contrary to his duty; but if all the proceedings are *coram non judice*, and so void, an action will lie." He puts the cause of judges not acting within their jurisdiction. It is put in argument, but the Court adverts to it afterwards. "The whole Court were of opinion, that the bringing of this action was a greater offence than the fining of the plaintiff, and committing him for non-payment, and that it was a bold attempt, both against the government and justice in general. The Court at the Old Bailey had jurisdiction of the cause, and might try it, and had power to punish a misdemeanor in the jury: they thought it to be a misdemeanor in the jury to acquit the prisoners, which in truth was not so, and therefore it was an error in their judgment, for which no action will lie. How often are judgments in this court reversed in the King's Bench? And because judges have been mistaken in such judgments, must that needs be against Magna Charta, the Petition of Right, and the liberty of the subject? These are mighty words in sound, but nothing to the matter. There hath not been one case put, which carries any resemblance with this. Those of justices of the peace and mayors of corporations are weak instances; neither hath any authority been urged of an action brought against a judge of record, for doing any thing *quatenus* a judge. That offences in jurymen may be punished without presentment, is no new doctrine; as if they should either eat or drink before they give their verdict, or for any contempt whatever: but it is a new doctrine to say, if a fine be set on a jurymen at the Old Bailey, that he hath no remedy but to pay it; for a *certiorari* may be brought to remove the order by which it was imposed, and it may be discharged, if the Court thinks fit. As to what hath been objected concerning the liberty of the subject, that is abundantly secured by the law already; a judge cannot impose a fine on a jury for giving a verdict contrary to evidence. If he doth any thing unjustly or corruptly, complaint may be made to the king, in whose name judgments are given, and the judges are

by him delegated to do justice; but if there be error in their judgments, as here, it is void; and therefore the barons of the Exchequer might refuse to issue process upon it; and there needs no Writ of Error, for the very estreats will be vacated. Though the defendants here acted erroneously, yet the contrary opinion *carried great colour with it*; because it might be supposed very inconvenient for the jury to have such liberty, as to give what verdicts they please: so that, though they were mistaken, they acted judicially, and for that reason no action will lie against the defendant."

I have been the more particular in stating the whole of this judgment, and the opinion pronounced by the Court, because it is a case that strongly applies to the situation in which general Picton stood. I am admitting, for the purpose of the argument, that general Picton acted erroneously; but when you consider what was the opinion of every lawyer on the island, it is impossible to say, that the contrary opinion *did not carry colour with it*. In this case, as in the case of the action brought upon the unlawful commitment of these persons by a judge who had no authority, I submit that an action could not be maintained, and still more, that the party cannot be liable to a criminal prosecution.

The case of *Mostyn v. Fabrigas** (in Error) has, however, been stated on the other side. It really appears to me, that when that case is considered it is an authority in my favour. It was an action brought by a person of the name of Fabrigas against general Mostyn. It was not brought against him as a judge, but as governor of the island, and the complaint against him was, that he had banished the plaintiff from the island without authority. To this action there was a plea of justification, and the fact alleged in justification was, that the plaintiff was endeavouring to excite a mutiny in the island. Upon the trial of the cause evidence was not given to sustain the plea, and there was a verdict for the plaintiff, with considerable damages. It was not pleaded that the act was judicially done, and upon the argument it was contended, that it was done by him as governor. Upon giving judgment, lord Mansfield states, that "Nothing is so clear, as that in an action of this kind, which is for an assault and false imprisonment, the defendant, if he has any justification, must plead it; and there is nothing more clear, than that if the Court has not general jurisdiction of the matter, he must plead to the jurisdiction, and he cannot take advantage of it on the general issue. He may plead that he did it as judge of record, and that will be a justification." He admits, that it is a justification, if he did it as a judge of record. If a man has done a thing lawfully, he does not want to justify it

* Cowper, 161. 20 Howell's State Trials, 183, S. C.

as a judge, it is only where he has acted erroneously. Lord Mansfield says, that "If he did it erroneously, he may plead that he did it as a judge." He says, that "If he had pleaded that he had done it as a judge, though it was in a foreign country, yet if he sat in a court of justice, and subject to a superior review, it is within the reason of the law of England, which says, it shall be a justification of the fact complained of; but that must be pleaded. If an action is brought against a person who is judge of record, he must lay it before the Court, by way of justification, that he was judge; but here no such matter was pleaded." Then what is the result of the case of *Mostyn and Fabrigas*, but this, that, in point of law, the plaintiff in error meant to say this was unlawfully done? "But," says lord Mansfield, "he has not pleaded that he did it as a judge, which would be a justification, nor is it in evidence that he sat as judge;" and lord Mansfield destroys all distinction between judges in courts of record, and those where no such courts exist, and lays down this rule, that in the case of an act done by a judge, where it is erroneously done, he is not liable to an action, and much less to a criminal prosecution. The same doctrine is held in the only remaining case, that of *Millar and Seare*. * It was an action brought against certain commissioners of bankrupt, by a man who had been committed for refusing to answer questions. The action was founded on a want of jurisdiction in the commissioners. They were persons having not a general, but a special and limited authority, and the court doubted whether an action would lie; and when they decided that an action would lie, the distinction was drawn between special and general jurisdiction: that against a judge having general jurisdiction an action would not lie, but that courts of special and limited jurisdiction are protected as to errors in judgment, only while acting within the line of their authority. Supposing that is too extensively laid down, it would not break in upon the doctrine I am contending for. With respect to any act erroneously done, only show that it was done by a person acting as a judge, and the law says the party shall not be liable to criminal or civil responsibility.

I have now gone through all the authorities which I have felt it incumbent on me, in the anxious discharge of my duty, to bring before the Court; and I would quit this part of the case with only observing, that on the other side, not a single instance has been produced of an indictment against any person for an erroneous act in the course of his judicial duty, in which such act was not *maliciously* done. If necessary, this doctrine might be carried farther; but all I am anxious to do, on the part of general Picton, is to sustain the proposition, that if an act is er-

roneous, and not malicious, the person committing it, is not liable to a prosecution; yet there are authorities which show that in the case of a malicious act by a judge, be he a jurymen or not, upon an averment of malice no indictment can be sustained. The first authority to which I would refer is 12 Coke, p. 23, the case of *Floyd and Barker*. It was resolved, that when a grand inquest indicts one of murder or felony, and after the party is acquitted, yet no conspiracy lies for him who is acquitted against the indictors for this; that they are returned by the sheriff by process of law, to make inquiry of offences upon their oath, and it is for the service of the king and commonwealth. Then he states, that a judge, being the judge of assize, or a justice of the peace, or any judge, being judge by commission, and of record, and sworn to do justice, cannot be charged with a conspiracy, for that which he did openly in court, as judge or justice of the peace; and you will find this doctrine thus extensively laid down, that where a party has jurisdiction, whether he acts as a judge generally, or a jurymen especially, whatever is done by him in the course of justice, he is not liable to an action on any averment of malice. This case, and the doctrine of it, you will find recognized in all the cases to which I have referred; *Bushell's case*, in 1st and 2nd Mod., and others.

In *Comberbach*, p. 116, there is the case of *Stowball and Ansell*. It was an action against a jurymen, for maliciously indicting the plaintiff of barratry. After a verdict for the plaintiff, it was moved in arrest of judgment that the action did not lie. For the plaintiff it was argued, that the word maliciously would maintain the action, otherwise it did not lie; an action lies against a judge for a malicious act. But it was answered and resolved by the Court, that the action did not lie, though it be laid *maliciously*.

There is a case in the old books, that where a man entered into a conspiracy, and was afterwards sworn on the grand jury, that purged the conspiracy. In such action brought by the lord Maxfield against Gravenor, in the Exchequer, the defendant pleaded that he was a jurymen, and made his presentment as a jurymen, upon his oath; and although the declaration was *maliciously*, yet the plea was held good, and judgment was given that the plaintiff should take nothing by his bill. Now I therefore contend,—independent of the ground on which I have argued, that if the defendant in this case had been let into his defence, it would have been shown that the act was not maliciously done;—yet, whether malicious or not, I contend, that on the more extensive ground on which I have put the case, if I make out that, in the particular instance, he acted as a judge, and exercised judicial authority, he is not liable to an action on any averment of malice.

* 2 Sir W. Black. 1141.

I come now to the question of jurisdiction, namely—whether, if general Picton was a judge, had he, as such, jurisdiction of the particular case? And I shall, lastly, examine the particular objection on the other side:—that, supposing torture to be the law of the island, that law required certain requisites and formalities, which have been omitted.

To show that he was a judge, it is only necessary to refer to the powers delegated to him by his majesty's instructions; it is not necessary that he should be, technically speaking, a judge; the judicial character does not depend on the garb or habiliment the person wears; if he is a person possessed of judicial authority, he is, says lord Mansfield, as such, entitled to protection. Then the question is,—was general Picton constituted a judge of the island of Trinidad, with a power to decide civil and criminal cases?—That depends upon his majesty's instructions, and is a question of fact.

In arguing this proposition, I must take back two of the propositions, which I set out with conceding to my friends. Now I am to take it for granted it was the law of the island that torture should be inflicted, and that the law did not cease by the cession of the island to the British arms. Here again, I must protest against the regularity of discussing whether it was properly, or improperly, the law of the island. If it was the law of the island (and I am now to take it for granted that it was) had general Picton jurisdiction? that is a question of fact, to be decided by the jury. If the question depends upon the law of Spain, that being a foreign law must be proved as a substantive fact; if the question does not depend upon the law of Spain, it was the province of the jury to ascertain the fact, and therefore the question of jurisdiction does not arise, for it was a question to be submitted to the jury, and it has not been submitted to them. But I am willing, for the argument's sake, to assume that it comes fairly before the Court, as if it was on a special verdict; and now let us see what is the evidence. The first piece of evidence is the instructions to general Picton, after the surrender of the island to sir Ralph Abercrombie. His majesty's instructions state, that "the same courts of judicature which subsisted in the said island previous to the surrender thereof to us, shall, for the present, be continued in the exercise of all the judicial powers belonging to them in criminal and civil cases, and that they shall proceed according to the laws by which the said island was then governed; and that such judicial powers as previous to the surrender of the said island to us were exercised by the Spanish governor, shall be exercised by you, our governor, in like manner as the same were exercised previous to the surrender of the said island." Here then, general Picton is invested, *eo nomine*, with judicial power precisely of the same description as that which existed previous to the surrender of the island

to his majesty's arms. Now let us see what was the judicial power he was invested with in this particular instance. I have shown, that he had judicial power. The evidence to which I shall refer is that of Begorrat the *alcalde*, read on the trial. He was asked, whether it was with his sanction that the torture was inflicted?* and you will find him stating, throughout his evidence, that he was bound to consult with the superior tribunal, and that that superior tribunal was general Picton.

Lord *Ellenborough*.—Does he refer to any authority, to show that, in the absence of the assessor, he was obliged to refer to the superior tribunal?

Mr. *Dallas*.—He says that the answer of the superior tribunal was, that she should be tortured. Then he is asked, what do you mean by the superior tribunal? his answer is, his excellency general Picton.

Lord *Ellenborough*.—By what sanction was the power of the audience of the Caraccas communicated to general Picton? was it by the instructions of his Majesty, or was it by the Spanish law?

Mr. *Dallas*.—His majesty's instructions are, that the laws shall continue as before; and the evidence is, that the appeal had been to the audience of Caraccas. But the transfer of sovereignty put an end to the appeal, and the jurisdiction of the audience of Caraccas ceased.

Lord *Ellenborough*.—Does it follow, that because torture might be inflicted with the authority of the audience of Caraccas, that, when that tribunal ceased, it might be ordered by the governor.

Mr. *Dallas*.—I should really hope and trust—and I submit it to the Court with great humility—that in a criminal case, as this is, general Picton will have the benefit of the rule of law, that what is done by a public officer shall be presumed to be right.

When the testimony before the Court is, that as being the superior tribunal he had jurisdiction and that evidence is not impeached, I do trust that it will not be presumed in opposition to the evidence that he had not jurisdiction.

Lord *Ellenborough*.—You are assuming in argument, what you have not shown to be the fact. You say, that the Spanish law had effect. Now only show us that, the Spanish appeal court ceasing, the power which theretofore belonged to the audience of Caraccas became vested in the governor.

Mr. *Dallas*.—I rely on the extracts of the Spanish laws, the testimony of one of the witnesses, and of Begorrat the judge. Begorrat is asked, "you consulted

* *Vide antè p. 286.*

general Picton, as superior tribunal, and there being no graduated advocate to appeal to?" His answer is, "yes; because it was the rule of law."—Question: "Had there been a graduated advocate present, would not the appeal to general Picton have been unnecessary?"—Answer: "I would have been obliged to have gone through the business with the assessor, till the definitive sentence; but I should have been unable to have put the sentence in execution without the authority and confirmation of the superior tribunal."* His evidence was, that the superior tribunal was general Picton, and that evidence was not contradicted on the part of the prosecution.

Lord *Ellenborough*.—It is not given as his evidence of a fact, but as his opinion as to a consequence of law. He tells us, that because there could be no resort to the audience of Caraccas, the governor was the superior tribunal.

Mr. *Dallas*.—I take it, that where there is no graduated advocate, the appeal is to the superior tribunal; and it appears to me, that general Picton was the superior tribunal.

The appeal was made to him; and if he was mistaken, it was error only in a judicial officer. I submit, therefore, on these grounds, that he had judicial authority, and that his authority was of general jurisdiction; for it will not be contended that the authority of the governor could be special and circumscribed. His authority stands in opposition to a special and limited jurisdiction at the common law, which is subject to a court having superior authority. A writ of prohibition will go to a court of limited jurisdiction, if it exceeds its authority, or a writ of procedendo with respect to matters within its jurisdiction; but I should be glad to know, what court in the island could have commanded general Picton to have proceeded, or have restrained him from proceeding? therefore, the moment it is made out that he had jurisdiction, it follows that he had general jurisdiction.

Lord *Ellenborough*.—The only evidence you have had is the case of Francisco the negro. There the judge did not proceed himself, but it was a matter of reference to the audience of Caraccas.

Mr. *Dallas*.—The only answer I can give is, that the audience of Caraccas existed then.

Lord *Ellenborough*.—But would the absence of a superior court throw upon the inferior the exercise of its power? suppose the court of appeal from the judgment of this court were abolished, would the functions of the court of appeal, by intendment of law devolve upon us?

Mr. *Dallas*.—The exercise of the power

of the audience of Caraccas was vested in general Picton by the instructions of his majesty.

Lord *Ellenborough*.—He was not by his majesty's instructions invested with a higher authority than had been exercised before. I should wish you to turn your attention to this part of the question.

Mr. *Dallas*.—A learned friend has suggested to me another part of his majesty's instructions. It states, "that all the powers of the executive government as well civil as military shall be vested solely in you, and that such powers as were heretofore exercised by any person or persons separately, or in conjunction, shall belong solely to you,"* &c. &c.

Lord *Ellenborough*.—Does that relate to any thing but *executive* power?

Mr. *Dallas*.—I submit, in this case, that general Picton had general jurisdiction. The question undoubtedly is, whether he had authority in the particular instance. It is clear that having a criminal jurisdiction, he had jurisdiction as to place; for the offence committed is within the limits of his authority. It is clear, also, that he had jurisdiction as to person; for the prisoner was living there subject to his authority. He had jurisdiction as to the subject matter; for it was criminal matter. The only question is, whether he had a right to inquire at the moment? which I contend he had.

Supposing I have succeeded in convincing the Court that he had general jurisdiction, and that he was the proper tribunal to decide, still it remains for me to consider the other objections. And, in the first place, that, supposing the infliction of torture to have been the law of the island, with respect to persons above a certain age, still that this girl was under the age of fourteen, and therefore was exempt from the operation of the law: secondly, that she should have had a person to defend her, which she had not; and, in addition to these objections, they say that general Picton by the course he adopted deprived her of her appeal. I deny every one of these propositions in point of fact; and admitting them in point of fact, I deny the inference from them in point of law.

The first objection made is, that the party, at the time the torture was inflicted, was under the age of fourteen years. Why, my lord, that is a question of fact: it depends, in this case, on contradictory evidence; and, if it had been important for the purpose of making out and sustaining the case on the part of the prosecution, it was incumbent on them to have proved it. But, I should be glad to know, in what part of the case reported by his lordship, there is any thing upon the evidence to show, that whether she was fourteen

* *Vide antè*, p. 287.

* *Vide antè*, p. 500.

years or not was made a question on the trial. If the question had been gone into, it would have been the subject of contradictory evidence, between which the jury must have decided, there being a great deal of evidence that she was above fourteen years. The mother swears that her daughter was of the age of ten years when she was put upon the piquet; the person with whom she lived proved that she had been with him three years; so that she must only have been, according to that account, seven when she became his concubine. The probability of that evidence would have been a question for the jury. Besides, his lordship asked whether any point was intended to be made as to her age? to which Mr. Garrow said, No.* The point therefore, on the trial, was abandoned.

But, at any rate, was this a matter for general Picton's jurisdiction? Should not the exception have been relied on by the party herself? Yet no such question was made. Why is it to be taken, that general Picton was the man who ought to have inquired into all the preliminary circumstances as to her age?

No such point was made upon the trial; and if it had, it would have appeared under the mandamus that she was above the age of fourteen.

Lord *Ellenborough*.—I do not recollect. I dare say you are right in stating that it was formally abandoned, that the point was not made.

Mr. *Dallas*.—We were reading evidence, when your lordship said, "there is no point made about her age, is there?" To which Mr. Garrow replied in the negative.†

The next point is, that she had no person appointed to defend her, and that Begorrat did not do what was necessary in that respect. But, in point of fact, the evidence is the other way: I will state what was the evidence taken under the mandamus. This is the testimony of De Castro.—Question twenty-sixth: "Will the proceedings show whether there was a defensor or not?—Yes. [The witness turned to the proceedings, and pointed out p. 43 and 44 of the Exhibit B, which, he said, contained the act by which Don Farfan orders Luisa Calderon to be notified to appoint a defensor, and which refers to a former act of Begorrat, who had ordered the same.]" He is then asked: "Was she entitled to a defensor's being present during the time of her being on the piquet?" Answer: "He ought not to have been present, but he ought to have assisted at her being sworn."‡

So that here is evidence of an act of court appointing a defensor to this person, before she was actually put to the torture. I admit that she had none. Why? Because she had applied to four persons, who had refused. But I think it will hardly be contended, that it was incumbent on the judge to find a per-

son to defend her, and to make him attend her too. It was not his fault that a defensor did not attend.

Then what becomes of the remaining part of the case, that she was deprived of her right of appeal? First, it is not contended that she did appeal. I admit that the right of appeal was from general Picton to his majesty in council; but, supposing, that the conduct of general Picton was irregular, what then? The party ought to have appealed; and if no appeal was interposed, will it be said, that *he* should have remitted the cause to any tribunal here? I therefore submit, that there is no pretence for saying there was any irregularity in the proceedings, from their commencement to their close. There being then no foundation for these objections, I might stop here; but even if they were well founded, what would be the consequence in point of law? I have stated, that governor Picton had general jurisdiction. The line is drawn between a court having general jurisdiction and a court having only limited jurisdiction. In the case of the latter the judges are only protected while acting within the limits of their authority; but, in the other case the protection is general in all instances, and the judges are not liable to any action or indictment. I will only point out one or two authorities; the first is 10 Coke, p. 76.

Lord *Ellenborough*.—I should be sorry to abridge any thing you wish to say, but I am obliged to go to Guildhall. If you think your argument will be much longer, we had better hear the remainder another day.

Mr. *Dallas*.—I will not trespass much longer on the time of the Court: indeed, my strength is at present too much exhausted to permit me. I was referring your lordships to 10 Coke, p. 76. It was resolved, that the action well lies against the defendants (it was an action against the officers of the Marshalsea court), and a difference was taken when a court has jurisdiction of the cause, and proceeds *inverso ordine*, or erroneously. There against the party who issues, or the officer or minister who executes the precept, or the process of the court, no action lies; but where the court has not jurisdiction of the cause, there the whole proceeding is *coram non judice*, and actions will lie against them.

My argument is, that general Picton had jurisdiction. It then proceeds; if the court of Common Pleas, in a plea of debt, awards a *capias* against a duke, an earl, &c. which by the law doth not lie against him, and that appears in the writ itself, and if the sheriff arrests him by force of the *capias*, although the writ be against law, inasmuch as the court had jurisdiction of the question, the sheriff is excused. The same doctrine is in the case of the countess of Rutland, upon an information or indictment against the officers for executing a *capias*; but the court held that by the issuing of the *capias*, the Common Pleas

* *Vide antè*, p. 520.

† *Vide p.* 520.

‡ *Vide antè*, p. 239.

having jurisdiction, the officers were excused, and were not responsible. You will find the same principle recognized in *Terry v. Huntington*, Hardr. 480. It was an action against the commissioners of excise for an act not within their jurisdiction, which was stated to be a stinted and limited jurisdiction, and which implied a negative, that they should not proceed at all in other cases, but if they should commit a mistake in a thing within their power, it should not be examinable by the Court. But, in this case, it was taken for granted, that where the act was the act of a judge, no action would lie. It is laid down by the Court, that as the matter is not within the jurisdiction of the commissioners of excise, which is a limited jurisdiction, they are liable to *an action*. I contend, then, upon the whole, that though the act be unlawful, yet being a judicial act, and done by a person possessing a general jurisdiction, it cannot be made the subject of a criminal proceeding.

I have now stated all the general grounds, on which I submit there ought to be a new trial. Having already taken up so much of your lordships time, I shall not occupy more by any unnecessary repetition of what I have urged. I have submitted to your lordships, *first*, that there is a gross misrepresentation in the evidence: *secondly*, that the verdict of the jury finds a fact that ought to have been found the other way; for instead of there being no such law as torture, it is now clear that it was the law of the island, at the time of the cession: *thirdly*, that if it was the law of the island at the time of the cession, it has not ceased to be so by the operation of the cession; and, *lastly*, on reason and authority, on the authority of decided cases constituting the law, and on the principles of reason and natural justice which form the foundation of all law, and demonstrate if persons do their best in the upright and conscientious discharge of their public duties, they shall not be liable for any erroneous transgression;—upon all these grounds I submit, that there ought to be a reconsideration of this case.

Lord *Ellenborough*.—As this case involves so many questions of the highest public importance, it certainly is not fit that it should be decided on a motion for a new trial; the evidence being materially varied from the position in which it stood at the trial, by what has appeared in consequence of the mandamus; and being a criminal case, which affects so many important interests, and embraces so many important topics, the Court wish it should be put in such a shape, that their judgment may be canvassed in another place. This can only be done by a special verdict being found.

It was, as I thought, at one time understood, that a special verdict was agreed upon; and I believe it was only in the absence of proper evidence that the idea of the special verdict was relinquished. It did not appear, as the case went to the jury, that the law of

torture existed in Trinidad at the time of the cession, and the jury, very properly and consistently with the evidence before them, negatived the existence of such law. Whether such a law can exist, consistently with the law of Great Britain, and in the manner stated by Mr. Dallas is a question exceedingly fit to be argued, gravely and seriously and with the opportunity of an appeal; we should, therefore, not do right to close the question upon the evidence on the trial, it having been shown by the result of the mandamus, that there is other evidence, as to the existence of the law of torture prior to the cession of the island. In every point of view, therefore, it is extremely fit that there should be a special verdict. Suppose a sufficient doubt shall arise on the second consideration of this case (which we are disposed to order) with respect to the proceedings against Francisco the negro (which is the only case of torture judicially ordered and appealed from to the Audience of Caraccas) there may be a question, whether the return to the mandamus could be read on a future trial. I, therefore, before the Court pronounces its determination, wish to know, whether there will be any objection to reading, on the trial the Court is now disposed to order, the evidence which has been already returned under the mandamus. If there is any such objection, the Court will obviate the difficulty by ordering another mandamus, upon which the same evidence will be returned. There may be a question on the act of parliament, whether such evidence could be received; for if the sense of the act is to be taken literally, it must be evidence given *for the trial*, and not to assist the judgment of the Court *subsequent to the trial*. If the parties are willing to have this evidence read on a second trial, there can be no occasion for another mandamus.

Mr. *Garrow*.—I can venture to appeal to your lordships personally, that I have, in every stage of this cause, wished to remove all difficulties, as to the question of the existence of torture. The question now put by the Court comes upon me by surprise, and I do not think myself warranted in giving my consent at the present moment. I will consult with my learned friends; for the great merit of the argument belongs to them, and not to me; and I will take care that the information the Court wishes for shall not be delayed.

Lord *Ellenborough*.—You will consult the learned gentlemen who are with you, and afterwards communicate to the Court your determination; unless it is now agreed to, there must be a new mandamus. We industriously abstained from intimating an opinion on any one of the points which have been submitted to us, for all of them may be fit to be considered, and all of them will arise on the special verdict.

Mr. *Garrow*.—There shall be no avoidable delay.

Lord *Ellenborough*.—You will be able to let us know to-morrow or next day.

On the following day, Mr. Garrow having, on the part of the prosecution, consented to read the evidence under the Mandamus al-

ready issued, Mr. Lawes informed the Court, that the defendant did not deem it necessary to apply for a further Mandamus.

Whereupon the Court directed the Rule for a new Trial to be MADE ABSOLUTE.

Proceedings on the Second Trial of Thomas Picton, Esq., in the Court of King's Bench Westminster, before the Right Hon. Edward Lord Ellenborough and a Special Jury, on Saturday June 11: 48 Geo. III. A. D. 1808.

SPECIAL JURORS.

John Hayter, of Cavendish-street, esq.

Samuel Page, of King's-road, esq.

John Uffard, of Kingsland, esq.

William Clay, of Gower-street, esq.

Charles Gordon, of Gower-street, esq.

Marmaduke Langdale, of Great Ormond-street, esq.

TALESMEN.

Charles Bond,

John Bristow,

James Cowing,

James Stewart,

William Brain,

John Northan.

Mr. *Harrison* stated the Indictment.*

Mr. *Garrow*.—Gentlemen of the Jury; it is my duty to state the circumstances upon which we, on the part of the prosecution, seek to obtain your verdict against the defendant, general Picton. The statement of the indictment by my learned friend Mr. Harrison, must have impressed you with the conviction that this is a case of serious importance not only to the gentleman who appears as defendant upon this record, but also to the public at large. It is certainly a case of much novelty, indeed I believe that in the history of our jurisprudence, it would be difficult to find an instance which can be assimilated to it. The facts are few and short; they lie within a very narrow compass, and all, therefore, that we, on the part of the prosecution, have to do is to state those facts, and afterwards to prove them.

Of general Picton, out of this case, I know nothing; I had never heard of his name, except as it may have appeared amongst the names of other military men, until I was called upon in the discharge of my professional duty, to examine the facts of this particular case; consequently I cannot be suspected of entertaining any other wish than that strict justice should be administered between the public and the person under accusation; I never have had, nor could I ever have had any other wish. But I must in this, as in every other case, discharge my duty; and if I should express myself in terms of indignation and abhorrence at the conduct of general Picton—if I should

in the strongest language express my detestation of the cruelty he has exercised upon a British subject—I think that in the eyes of every man disposed to judge candidly I must stand excused.

Gentlemen; the charge I make is nothing less than this:—I charge the defendant, general Picton, with the crime of inflicting a cruel torment upon one of the king's subjects without any justifiable cause. I shall state to you what the question between us is, for concerning the fact itself there can be no dispute.

At the time when the defendant inflicted this cruel torture upon the person who will be called as a witness before you, he held the high and responsible situation of governor of Trinidad, an island which had, in the year 1797, surrendered to the forces of his Britannic majesty under the command of general sir Ralph Abercrombie. General Picton was by that distinguished officer, sir Ralph Abercrombie, thought (and I dare say not without sufficient reason) a proper man to be appointed governor of the ceded island, until his majesty's pleasure should be known; and till that pleasure should be known, sir Ralph Abercrombie conceded to the inhabitants, that they should be governed by the existing laws of the island, as they were in force at the period of its surrender.

It happened that a young woman, whose name was Luisa Calderon, had been seduced at a very early age;—I should, however, premise that according to the habits and customs of that country, young women contract marriage at a very early period of life, and if they have not the good fortune to form a matrimonial engagement, it is generally found that they are seduced to submit to a less honourable connexion;—it happened that a young woman, a free mulata of the name of Luisa Calderon, had at the early age of ten years, been seduced by a person named Pedro Ruiz with whom she for some time lived as a mistress. She had entered into an intrigue with a man named Carlos Gonzales, an acquaintance of the person with whom she was living. He frequently visited the master, and he frequently visited the girl when her master was from home, and he availed himself of one of those opportunities to rob the house of two thousand dollars.

* See it *antè* p. 227.

He was very soon apprehended, and Luisa Calderon being suspected of having been an accomplice in the robbery, she also was taken up. She was examined before a magistrate or inferior judge, whose title is *alcalde*: it will appear that this magistrate has a right to institute such an inquiry, and to go on with it, and it will also appear that the governor has a right to do the same. In this case, the *alcalde* (whose name was Begorrat) had instituted the proceeding, and had examined Luisa Calderon: the guilt of Gonzales was a question about which no doubt could be entertained; but there was a difficulty in obtaining a restitution of the money, which had been conveyed away by Gonzales.

An application was made by Begorrat to general Picton, for leave to inflict the torture on Luisa Calderon, in order that she might be forced to confess the circumstances of the robbery, and discover where the money was secreted; and the charge against general Picton is, that he issued an order in the French language, the English of which is "INFLECT THE TORTURE ON LUISA CALDERON." In consequence of his signing this order, the torture was inflicted upon her. It was what was called putting her upon the piquet, and it being probable that some of you are as ignorant of what that is as I was until I read my brief, it is necessary that I should describe it to you. On the former occasion when this subject was submitted to the consideration of a jury, I, with the express leave and approbation of my learned friend, handed up a drawing which exhibited an exact representation of this mode of torture. It appears that many persons have taken great offence at my having done what they conceive to have been so very improper, and no terms seem with them to have been too strong to express the impropriety of my conduct. I confess, for my own part, that I never felt, nor do I now feel, that there was the least impropriety in it; if I did, I should have been the first to have apologized for the indiscretion of the moment. The object of exhibiting that drawing was merely to make the jury acquainted with something with which they were not acquainted before, and I think it could not have been considered by any candid mind as done with a view to inflame their passions, or create any undue prejudice. That which I shall do to-day is much better calculated to promote such an object, if I could possibly have it in contemplation:—I shall make this unhappy young creature describe the mode in which the torture was inflicted upon her; which I shall state to you as particularly as I am able, referring you to the description which she herself will afterwards give.

I understand that one of her feet was placed upon a pointed piece of wood; that her arm on the opposite side was drawn up tight by a pulley, so as to stretch her body from the sharp point on which the ball of her

foot was placed towards the ceiling, and the leg on the side on which the arm was drawn up was fastened to the other hand. In this manner the party who appears before you as prosecutrix, was suspended, and certainly one cannot conceive any thing more afflicting. In this situation the young woman was kept fifty-three minutes by the watch. You will find that the object was, to extort from her a confession, where the treasure which had been stolen from her master was hidden. But whether she was actuated by motives of shame not to disclose the fact, or whether she was influenced by her partiality for this man; certain it is, that she did not, if she had the means, give any information; and you will find that after she had been taken down from the piquet, she was a second time placed in the same situation till it was again necessary to release her, not because the period of her punishment had expired, but because having fainted under the torture, she was unable to endure it any longer.

This was done by the order of general Picton; and when I shall have proved the fact, unless he can make out a justifiable excuse, he must be found guilty. My charge against him is, that he has, without authority and without any justification, inflicted a cruel punishment upon one of his majesty's subjects. I apprehend it will in answer to this be said, that he was authorized to do so by the Spanish law. That is the defence which will be made by my learned friend; we are not strangers to that defence, but I think it would be a waste of time for me now to argue the validity of it. I insist that by the Spanish law, as it existed before the cession of the island of Trinidad to the British arms, no Spanish governor could have inflicted this punishment. I state with perfect confidence, that it will appear to you by all the evidence taken in the course of this prosecution—by the testimony of the witnesses, and by all the written evidence—that down to the period of the arrival of general Picton in the island of Trinidad, and his assumption of the government, no such thing as torture had ever been inflicted in Trinidad. I shall prove that there were no means of inflicting it, for it was reserved for the government of general Picton for the first time to introduce this piquet. It was first employed by him in the barrack yard as a punishment for soldiers who had done amiss; it was afterwards transferred to the gaol, and, with the exception of some negro women who were tortured upon a charge of sorcery, Luisa Calderon was the first person upon whom torture was inflicted; such a mode of punishment for the purpose of extracting truth was for the first time resorted to in her case. I think I may safely infer, that as there were no means of inflicting it before that period, it never could have existed; and I can with truth say, that the oldest man on the island has no memory of any such thing.

If my learned friend should be able to show that at some time or other by the law of Old Spain torture might have been inflicted, I shall then contend, that still general Picton had no authority to inflict it, for that the operation of British law on the island when ceded to the British arms rendered it impossible: *Whatever the law might have been before the cession, THE MOMENT THE ISLANDERS HAD THE BENEFIT OF BRITISH LAW, I INSIST THAT THE PUNISHMENT BY TORTURE VIRTUALLY CEASED.*

Gentlemen the facts lie within a very narrow compass; perhaps much of your time will be occupied in the investigation of the case, but at present I shall give you no further trouble.

EVIDENCE FOR THE PROSECUTION.

*Luisa Calderon** sworn.—Examined by Mr. Nolan.

Do you understand English, or do you need an interpreter?—I understand very little

[Mr. Garrow suggested that it would be much better, and probably save time, to examine the witness without an interpreter.]

Did you live in the island of Trinidad in the year 1801?—Yes.

With whom did you live?—With a person of the name of Pedro Ruiz.

Do you remember a robbery being committed in his house?—Yes, sir.

By whom was it said to have been committed?—It was said by me.

Was any body else charged?—No.

Was any person taken up for it?—Yes, sir.

Who was? A person of the name of Carlos Gonzales.

Were you yourself taken up?—Yes, I was.

Before whom were you brought?—Governor Picton.

Did governor Picton say any thing to you, when you were brought before him?—Yes, he did.

What did he say?—He said to me, that if in case me would not tell who took the money, he would make the hangman pass his hand upon me.

Did he say any thing more to you? No.

Were you after this, sent to any and what place?—To the gaol.

Were you sent there under a guard?—Yes.

In what part of the gaol were you confined?

—In a room where there was a good many together.

Did any body come to you there to ask you about the robbery?—No, sir.

Were you brought before any body?—I was brought before Mr. Begorrat.

How long had you been confined in prison before you were brought before Begorrat?—Eleven days after.

What passed when you were brought before Begorrat?—He asked me to tell who took the money.

Did he say any thing more?—No, sir.

Did you say any thing to him?—No, I said I did not know.

Was any thing done to you at that time?—No, not at that time.

Did you see Begorrat afterwards?—Yes.

How soon afterwards?—In the evening.

What passed between you and him when you saw him in the evening?—He came to give me the torture.

What did he say to you?—He did not say nothing; he told me I was to be put on the piquet.

Was any thing done to you in consequence?—I was put upon the piquet.

Was the piquet in the room in which you were confined?—No, sir.

Were you brought into the room where the piquet was?—Yes.

When you were brought in there, what was done to you?—They put me on the piquet.

Describe to his lordship and the jury how they put you on the piquet?—In this manner (the witness putting herself in an attitude representing her situation on the piquet), one hand tied up, and one foot on the piquet, and one hand and foot tied together.

And the other hand tied up?—Yes.

By what was the hand that was tied up pulled up?—By a cord or rope.

Did the foot that was not tied up rest on any thing, and what?—On a sharp point.

Did the weight of your body rest on the sharp point?—Yes, sir.

Was it the hand and foot on the same side of your body, that were tied up or the opposite?—It was one foot and one hand tied up together; the foot that was not on the piquet was tied to the other hand.

They changed your feet alternately?—Yes.

But if I understand you, it was the opposite hand and foot that were tied together?—Yes.

When your right hand was tied up, your right foot was on the piquet?—Yes; the right hand and left foot were tied together, and left the right foot on the piquet.

How long did you continue in that situation?—I do not know the first time.

Can you form any guess how long it was?—No.

I think you said that your posture had been changed?—Yes.

A different foot was put on the piquet?—Yes.

Was there any thing on your foot, or was it your bare foot?—My bare foot.

Who was in the room while you were on the piquet?—Mr. Begorrat, Mr. De Castro, Mr. Flores, Mr. Vallot, and a servant of Mr. Vallot,

* See her examination on the former trial ante p. 456.

Did any body hold the rope by which your hand was raised towards the ceiling?—No; it was tied; the man tied it; and when it was tied it was left by itself.

Was any thing said to you while you were on the piquet?—They wanted to know who took the money.

Who did? Who wanted to know that?—Mr. Begorrat.

Did you make any answer?—Yes.

What did you say?—I said that it was Carlos Gonzales.

Lord *Ellenborough*.—Was this before she was put on the piquet, or after?

Mr. *Nolan*.—Were you asked this question before you were put on the piquet?—Yes.

After you were taken down, what was done to you?—I was put in iron bars.

How large were the irons that were put upon you?—Very large.

Can you describe them?—Yes, sir.

Was there a long bar?—Yes, a large bar.

Was there any thing on the bar?—Yes, just in this manner; there was a large iron bar fastened to a post, then two rings, in which the legs were put.

And your legs were put in them?—Yes.

And then they were fastened together?—Yes.

What time of the day was it when you were taken down from the piquet?—The first time it was in the afternoon.

About what time in the evening?—Between 7 and 8 o'clock.

Did you remain in irons during the night?—Yes.

Did you see Mr. Begorrat the next morning, and when?—Yes, in the morning.

About what time?—Early in the morning.

How early, about what o'clock; do you know?—No, I cannot say.

But it was early?—Yes.

When you saw Mr. Begorrat, early in the morning, did he say or do any thing to you?—He put me on the piquet again.

Was the position in which you were placed on the piquet the second time, the same as that in which you had been placed the first time?—Yes.

How long did you continue on the piquet the second time?—Twenty-one minutes.

Was any thing said to you while you continued there?—I was asked the same question again, to tell who took the money.

Did you make any answer?—Yes.

What?—That it was Carlos Gonzales.

What was the occasion of your being taken down; did he say any thing more?—No.

After you had said, that Gonzales had the money, were any other questions asked you?—No.

No other?—No other.

How soon after you had been put on the piquet did you say, that Carlos Gonzales had taken the money?—I do not know how soon, but I said it soon after I was put upon the piquet.

Were you continued upon the piquet for any time, after you had said that Gonzales had taken the money?—Yes.

What was the occasion of your being taken down?—I fainted away.

What was the cause of your fainting?—It was early in the morning, and I had had no breakfast when Begorrat came; but I do not know the meaning.

Did you suffer pain?—Yes, a great deal indeed.

Did you faint more than once, or only once?—Yes.

After you were taken down, what was done to you?—I do not know.

Who was by when you were put upon the piquet the second time?—Begorrat, Mr. De Castro, Vallot, and Raphael Shando.

Who else?—A black man, the servant of Vallot.

Did the servant of Vallot do any thing to you?—Yes, he tied me up.

Who was Mr. Vallot?—He was the gaoler man.

After you came to yourself, was any thing done to you?—They put me in the iron bars again.

Was any thing said to you?—No, sir.

How long did you continue in the iron bars?—Eight months together.

Did you remain in the same room in which you had been piqueted, for eight months?—Yes.

What sort of a room was it?—A very low room, so that I could not stand up.

So that you could not stand up properly in it?—No.

The irons were fixed to the wall?—Yes.

To a post?—Yes.

Was that the lowest part of the room?—Yes.

Could you have walked about if you could have stood up?—No, I could not have walked about; I could just stoop down; I could not stand upright.

Were you much hurt by being put on the piquet both times?—Yes, very much.

What injury did it do to you, how did it hurt you?—Very much.

Where?—In my hands and my wrists, and under my arm-pits.

Any where else?—No.

How long did you continue to suffer the effects of the torment?—I always suffer it.

Have you yet got the use of your arms?—Very little.

You have not the same use of your arms now as before you were tortured?—No.

In what month was it you were put on the piquet?—I do not recollect what month.

Was it the beginning or end of the year?—I do not know.

How old were you at the time?—Not fourteen years.

How long had you lived with Pedro Ruiz?—About two years.

Had you at the time you were upon the

piquet any person appointed to defend you?—No.

You had not?—No.

Was there any friend who had access to you during the time?—No.

Then you saw nobody but the judge, and the gaoler, and the attendants?—No.

Before you had been put upon the piquet had any body been put there to your knowledge?—No, sir.

You did not see it?—No.

How came you to be discharged at last?—General Picton.

General Picton ordered you to be discharged?—Yes.

Are there any marks in consequence of your being put upon the piquet?—Yes, upon the wrists here.

Mr. Garrow.—Come nearer, and show them to the jury.

[The witness exhibited the marks on her wrists to the jury.—She was not cross-examined.]

Raphael Shando* sworn.—Examined by Mr. Harrison.

Were you in Trinidad in the year 1801?—Yes.

What were you?—A constable.

Did you see Luisa Calderon at the gaol in the month of December 1801?—Yes, sir.

On what day?—I cannot tell.

Upon what occasion did you first see her?—About the occasion I understand of the robbery of Pedro Ruiz.

Did you see any thing done to her while she was in the gaol?—Yes, sir.

State what passed in your presence?—I saw her given the torment.

Describe how it was done?—She was lifted up with the right hand on the left foot.

Describe how it was done?—The right hand drawn up, and the left foot on the piquet.

What was done with the other hand and foot?—The other hand and foot were tied together.

In what way was the hand that was tied up fastened?—The right hand was tied with the left foot, and the left hand was tied up to the ceiling.

What part of the foot rested on the piquet?—The point of the toe.

Was the rope with which she was drawn up to the ceiling fastened, as soon as she was drawn up?—Yes, tied with the rope.

Was it fastened after she had been drawn up, or kept in the hand?—The gaoler-man, the negro, held her up by the rope.

How long was she suspended in that way?—The last torment was twenty-two minutes, by my watch.

Twenty-two minutes, you say, suspended?—Yes.

* See his examination upon the former trial, *antè*, p. 461.

What occasioned her being taken down?—She fainted.

Did she appear to suffer considerable pain?—She fainted twice.

What questions were put to her while she was in this situation?—Begorrat asked her "Who has had the money?" she says "I do not know."

When was this question asked her by Begorrat?—While she was on the torment.

Did you see her the evening before?—Yes, about seven o'clock.

In what situation was she when you saw her?—I saw Begorrat, De Castro, Vallot, and Flores; they were giving her some wine and water.

Where was it they were giving her the wine and water; was it in the room where she had been piqueted, or any other part of the gaol?—Not the room they gave her the torment in; it was in a room below, that they gave her the glass of wine.

It was seven o'clock, you say, in the evening?—Yes.

In what condition did she appear; did she appear weak?—Yes, very weak.

In the morning on which you saw her on the piquet, when Begorrat asked her the question about the money, was any other question asked her?—I did not understand any other question but "did she know any thing where they had put the money?"

What reply did she make?—She said, she did not know.

Was the question of whether she knew where they had put the money, asked her once or more?—I do not understand you.

You said she was asked where she had put the money?—When Begorrat gave her the wine and water do you mean?

No, I ask you what she said in the morning on the piquet?—She said she did not know.

Was the question asked her more than once where she had put the money?

[It appeared rather difficult to make the witness understand the questions, and an interpreter (Mr. Newman), was called.]

When you saw Luisa Calderon in the evening when the wine and water was given to her what questions were asked her?—She did not ask for the water, but he gave it her.

Ask him whether Begorrat asked her any questions when he gave her the wine and water in the evening?—They were all present, the escrivano, Flores—

What was said to her?—Begorrat he asked her whether she would now say the same thing which she had before said of Carlos.

What answer did she give?—She said, yes.

Was any thing else said?—The judge told me to take her back to the room where she had been.

Are you speaking of the evening before you saw her piqueted or the morning?—The night before.

Was the room to which she was taken by the witness the room in which the piquet was?—No sir; the room to which she was taken was above where the piquet was.

Was she taken back to the room where the piquet was?—Yes taken back immediately to the room where the piquet was.

The next morning when she was piqueted what was said to her then?—She was asked whether she knew where the money was, and she said she knew nothing about it.

How soon after she was put on the piquet was that question asked her?—Directly, about three or four minutes after.

Was she asked the same question again, and how often?—Only once, and no more.

Was she asked any more about the money while she was on the piquet?—Three or four times, and she always said the same thing.

Was she kept on the piquet till she fainted?—Yes, she was kept on the piquet till she fainted twice.

What was done with her after she fainted the first time?—The gaoler put a little vinegar under her nose to make her recover.

Was she let down from the piquet for that purpose, or not?—No, she was not let down, but the vinegar was given to her on the hand.

While she was suspended?—Yes, sir.

How long was she continued on the piquet before she fainted a second time?—By my watch twenty-two minutes.

How long was it between the first fainting and the second fainting?—I cannot say but that in twenty-two minutes she fainted twice.

Did she faint the second time while she was on the piquet?—Yes.

What was done with her after she was taken from the piquet?—She was put in the iron bars.

Describe the iron bars in which she was put?

Lord *Ellenborough*.—As there is no contradiction of these facts, it will be enough to have had them stated once by the first witness.

Mr. *Dallas*.—I certainly do not mean to deny the facts, which I mean to justify.

Mr. *Harrison*.—Was any defensor present?—No.

Who was present?—Mr. Begorrat.

What was he?—The judge.

What was De Castro?—The *escrivano*.

Lord *Ellenborough*.—Does that mean notary, or secretary?—It means properly a scrivener.

Mr. *Dallas*.—He was the officer appointed by law to record what passed.

Lord *Ellenborough*.—I take it he was a public officer engaged by the judge; a secretary or actuary appointed by the judge.

Mr. *Harrison*.—You said Vallot was present; what was he?—The gaoler.

Raphael Shando, what are you?—An inferior officer, whom they call in Spain an *alguazil*.

Who were present besides?—Nobody else. You have said that Begorrat, De Castro, Vallot, and yourself were present?—Yes, and the slave of Mr. Vallot.

Lord *Ellenborough*.—That was the black man?—Yes.

Mr. *Garrow*.—I suppose that the other circumstances the last witness spoke to, as to the length of her confinement, we need not go into.

Mr. *Dallas*.—They are not contradicted.

Mr. *Garrow*.—Then it is taken that this witness and others would have confirmed her subsequent relation, and the facts are taken as she has stated them, without going into them.

Mr. *Dallas*.—Certainly.

Mr. *Harrison*.—How long have you lived in Trinidad?—Eight years.

How many years had you been *alguazil*?—Six years.

Had you ever before seen torture inflicted in Trinidad?—No.

When did you first see any instrument of torture in Trinidad?—At the piquet guard.

When were instruments of torture first put up in the gaol?—The first I saw was when Luisa Calderon was tortured.

When did you first see them any where in the island?—First at the piquet guard.

When?—About a month, or a month and a half before they were applied in the gaol.

Was that after general Picton was governor?—Yes.

By the Jury.—Can you tell the height of the room in which the piquet was placed?—

It was a kind of room built in this manner; the middle was high, and low on both sides.

What was the height of the room to which she was taken after she was placed on the piquet?—So low that she could not stand upright without touching the ceiling of the room.

Lord *Ellenborough*.—Was the room in which she was confined after she was piqueted the same room in which the piquet was?—Yes.

Was the part where the irons were fixed a low part?—Yes.

In that part could a person stand upright?—No.

[The hand-writing of general Picton to a paper produced was admitted.]

Mr. *Dallas*.—That order relates to something which was done before; they must read the whole.

Mr. *Garrow*.—I have no objection to reading any part that goes before, if my learned friend wishes it. Mr. Dealtry, you will just read the order.

Mr. *Dealtry*.—(of the Crown-office) read the order as follows: "Apply the torture

to Luisa Calderon." Signed by general Picton.

Mr. *Lowten* read the original order :
"Appliquez la question à Luisa Calderon."

Lord *Ellenborough*.—Now read what Mr. Dallas suggests ought to be read.

Mr. *Lowten* read as follows: "At the Port of Spain, on the twenty-second day of the same month and year, his honor the judge of first appointment, proceeded to the prison wherein Luisa Calderon, a free mulata was confined, for the purpose of taking her deposition; to whom the said judge, in the presence of me the notary, administered the oath in due form on God our Lord and on a Sign of the Cross, and thereon she promised to depose the truth to the best of her knowledge to whatever she might be interrogated; and accordingly being questioned respecting the contents of the foregoing act, and the other circumstances that had occurred, with the intent to ascertain the truth relative to the cause in question, she fully denied knowing who were the perpetrators of the robbery: in consequence thereof, his honor ordered this deposition to be suspended till a more convenient opportunity; and he signed hereto, which I attest.

Signed BEGORRAT.

Before me FRANCISCO DE CASTRO.

In consequence of the strong suspicions his honor entertains of the mulata Luisa Calderon, a domestic of Pedro Ruiz, concealing the truth relative to the aforesaid robbery expressed in these proceedings, and his honor being persuaded that she will discover the truth of the matter by means of a slight torment being inflicted on the said Calderon; and whereas his honor is not invested with power to execute the same, his excellency the governor and captain-general of this island must be made acquainted hereof with the summary of this process, by virtue of this document, to the intent that his excellency may determine as may appear to him justice, the usual and requisite forms for that purpose to be adopted and observed by the notary in this cause; and in pursuance hereof his honor thus decreed and ordered, and he signed hereto, which I the underwritten notary attest, this day, the aforesaid twenty-second of the said month and year.

Signed BEGORRAT.

Before me FRANCISCO DE CASTRO.

Whereupon I, the said notary, proceeded to the tribunal of the said governor and captain-general of this island, and the usual forms having been observed, I made known to his excellency

the foregoing act, as also the summary, in conformity, as decreed, which I attest.

Signed CASTRO.

Then comes the order, "Apply the torture to Luisa Calderon.

Signed "THOS. PICTON."

And his excellency the governor and captain-general of this island of Trinidad thus ordered, and he signed the same on the 23rd December 1801.

Before me FRANCISCO DE CASTRO.

I transmitted these proceedings to the court of his honor the judge of the first appointment.

Signed CASTRO.

At the Port of Spain, in the windward island of Trinidad on the 23rd December 1801, his honor the ordinary judge of first appointment, having seen these acts of the cause in question, together with the order*—

Mr. *Dallas*.—You need not read any more.

Mr. *Garrow*.—Mr. Dallas, what is the date of that order?

Mr. *Dallas*.—The 23rd December, 1801.

Mr. *Garrow*.—I do not know whether Shando gave you the date of the evening or morning.

To the Witness.—What day was it that you first saw her piqueted?—It appears to me the 23rd of December.

Was it on the day the order was given?—I do not know.

Was it before or after Christmas day?—Before.

DEFENCE.

Mr. *Dallas*.—Gentlemen of the Jury; It is now my duty to address you on behalf of general Picton, and to submit to you such observations upon the facts of this case, and upon the law applicable to those facts, as I flatter myself will (under the direction which you will hereafter receive from his lordship) establish a sufficient answer to this accusation.

You have been truly told by my learned friend who appears as counsel for the prosecution, that the facts themselves lie within a very narrow compass, and indeed they are not the subjects of difference or dispute between us.

The general outline of the case appears to be this: A robbery to a very considerable amount had been committed in a dwelling-house in the Island of Trinidad, of which general Picton was (under his majesty's instructions) the governor. Suspicions fell on the person who has this day been examined as a witness, and who was at that time living as a servant in the dwelling-house where the

* *Vide antè*, p. 341.

robbery was committed, and in a state of prostitution to the individual who was robbed. In consequence of these suspicions, she was arrested and carried before general Picton; a slight inquiry then took place, which ended in his dismissing the affair, and referring it to the ordinary magistrate whose duty it was to take cognizance of it. In consequence of this reference to a person holding the office of *alcalde*, a great number of examinations took place, in the course of which, the individual who has to-day appeared as a witness before you at first denied all knowledge of the transaction: the evidence (consisting of the testimony of persons who had seen her in the House and near the spot) was so strong, that there was every reason to suppose that the account which she had given was false; and (as we state) the law of Spain authorizing the infliction of torture for a discovery, the inferior and ordinary magistrate, Mr. Begorrat, transmitted the whole proceedings to the governor, suggesting to him, that by the Spanish law torture was authorized in certain cases, that that particular case required the infliction of it, but that it could not be applied without his sanction, and therefore requesting that he would sign an order authorizing its infliction. In consequence of this representation by the competent person (he being a Spanish lawyer), general Picton properly attended to his representation and assented to the proposal he had made.

I am sure, gentlemen, that I need not point out to you (even if the circumstances of the case required that it should be dwelt upon), that the idea of inflicting the torture did not originate with general Picton: it was suggested by the tribunal from which the appeal to him was made, and therefore the utmost extent of the charge brought against him is, that upon the representation of a court of competent jurisdiction, he signed an order to subject to a slight torture the person who, by her own confession, had committed a capital offence, and who, in this country, instead of being subjected to the sort of treatment you have heard of, might have been, in a few hours, led to an ignominious death.

This is the outline of the case, and here I must beg leave to state, that some evidence has been given which has no sort of bearing upon the present charge. It is necessary, therefore, that you should correctly understand what the charge is. It is a charge of having caused the person before you to be inhumanly tortured; and the evidence in support of it is the having issued an order to Begorrat, the *alcalde*, for the application of torture. It is extremely material that you should understand that this is the extent of what is imputed to general Picton. I do not mean to deny, that if it be made out that his conduct was illegal, he is responsible, although he was not personally present at the infliction; for, in contemplation of law and reason, every man must be presumed to intend that

which is the natural consequence of his actions: if, therefore, it be made out that the order was illegal, he will be responsible (supposing that he has no sufficient answer) for every thing that was the direct consequence of that act. Before I proceed, it is necessary to draw your attention to a matter which forms a distinct part of the case. It is not contended that general Picton conspired with Begorrat to cause one *whom he knew to be innocent* to be tortured, but it is admitted that the person who was subjected to this punishment had been guilty of a capital offence. Her imprisonment was a necessary consequence of her guilt; and whatever the nature of that imprisonment may have been—even if I were to admit that it was accompanied with a degree of rigour and severity beyond what the circumstances of the case required—it is not to be the ground of any imputation upon general Picton, for her imprisonment was not the result of the order for the torture, but she had been previously ordered to be put in a state of confinement; and for the treatment she there experienced general Picton is not responsible, unless it can be supposed that the governor of Trinidad was, in respect of his situation, the keeper of the gaol. You will therefore dismiss from your consideration every thing that relates either to the length or to the severity of the imprisonment, even if the evidence (which I shall contradict) should have impressed you with an opinion that the imprisonment was unusually and unnecessarily severe. Whatever the consequences of that imprisonment may have been, general Picton is not responsible for them; it was the business of the gaoler; and if in the execution of his office he has been guilty of any unnecessary severity, it should have been made the subject of a substantive charge against that individual; for with his conduct general Picton has no concern.

As I have already stated, it is necessary that you should, at the outset, clearly understand the nature of the question which you have to try upon the present occasion, more especially as some subjects have been introduced, which, as it appears to me, are in effect calculated to divert your attention from the only object to which it ought to be directed. I shall not take up your time by going through a minute examination of the different counts of this indictment; it is enough that I should state, that, in substance, the charge against general Picton is the having inhumanly tortured the person who has this day given evidence before you, and that he is accused of having done so *unlawfully and maliciously*. I do not, at the present moment, stop to inquire whether, in order to sustain this charge, it be or be not necessary to prove the existence of actual malice in the mind of the defendant. That is an inquiry which more properly belongs to a subsequent stage of the discussion. I shall now content

myself with stating that about which we are all agreed, viz. that as the act must, in order to become the subject of an indictment, have been unlawfully done, its illegality is the very essence of the charge; and if it shall, in point of fact, turn out that this was a lawful proceeding, it must be admitted that general Picton is entitled to his acquittal; because as the foundation of the accusation is, that his conduct was illegal, if the lawfulness of that conduct is shown, the foundation is removed, and the charge which is built upon it falls to the ground.

You will understand, therefore, that the only point for your consideration is, the legality or illegality of the act; and you will at once see that some topics have been introduced which have no relation whatever to the question before you. In the first place, you have nothing to do with the general consideration of the question of torture. Whether it ought or ought not to have been incorporated into the judicial system of any country it is not your business to inquire. The question which you are to determine is not as to the moral fitness or expediency of such a practice constituting a part of the jurisprudence of a country; whatever opinion you may entertain on the subject, that opinion cannot be substituted for the law of this island. If the law has decided that torture should be inflicted, general Picton was bound by that law to enforce it, whatever opinion he might have entertained, or whatever opinion you may entertain, as to the propriety or expediency of enacting or repealing such a law. With this you have nothing to do; your attention must, in the legitimate discharge of your duty, be confined to the averment of the indictment, the truth or falsehood of which constitutes the criminality or innocence of the defendant, and that averment is, that the treatment inflicted upon the prosecutrix was a violation of the laws of Trinidad.

Mr. Garrow (as I understood him) maintained the illegality of torture, in the instance before us, in two ways. *First*; admitting that the law of Spain was to be the rule of conduct for general Picton until it should be expressly altered (it having been continued to the inhabitants by general Abercrombie upon the cession of the island), he stated that the application of torture was not a part of the law of Spain—an assertion which, if true, could easily have been proved. The *second* ground upon which he contended that torture was, in this instance, illegal, was, that admitting torture to have been a part of the law of Spain, still that, by the operation of some principle in the law of England (which my learned friend has not condescended to explain, and for asserting the existence of which I contend that he has no authority), it was instantly abrogated, and that, although up to the period of the cession the infliction of torture formed a part of the criminal jurisprudence of the Island, yet, by the

operation of some principle, for which he can produce no authority, the law of torture *ipso facto* ceased by the surrender of Trinidad to his majesty's forces.

I think these were the only grounds upon which my learned friend Mr. Garrow, in the opening of his case, maintained that general Picton ought to be convicted upon the present charge. It is not possible for me accurately to foresee what course my learned friend will take in his reply; but I am persuaded that he will take a fair course, and I will not do him the injustice to suppose that, in the conduct of a criminal prosecution, when exercising his privilege of reply (I having no opportunity of answering him), he will urge topics that formed no part of his original opening speech. And I therefore beg you to recollect, that as far as that speech went, the only grounds upon which he rested his case were the two which I have already described. The examination of the witness, however, has pointed to other things,—namely, what was her age at the time the torture was inflicted, and whether any person was appointed to defend her.

His lordship will tell you that these are matters which, if they are meant to be insisted upon, ought to be proved; if the infliction of torture upon her was, on account of her non-age, an irregularity, and if her not having a person appointed to defend her was an irregularity, evidence to establish those facts ought to have been adduced.—

Mr. Garrow.—I should be sorry if my learned friend were put to any inconvenience by not understanding the object of my argument.—I should have thought that it would have been very improper in me to have anticipated any thing that might be urged on the other side. Mr. Dallas says, he ought to have been apprised of the course I meant to take, and he supposed, that the course of examination has differed from the opening.—I mean to say that there is no Spanish law to authorize torture in Trinidad; but I also say further, that if they show me a Spanish law which does authorize it, I shall show them that they have not conformed to that law.

Mr. Dallas.—I am glad that my learned friend has now explained himself a little more distinctly; for although I do not impute to him the having meant to keep me in the dark, yet I certainly did not foresee that this was the exact course he meant to take; I am glad to know it now, because it will be incumbent upon me to go into other parts of the case, and to produce evidence which would otherwise have been unnecessary.

I am, then, to understand, that the ground upon which it is contended that the conduct of general Picton has been illegal, is in substance this:—*First*, That torture was never at any time part of the law of Trinidad: *Secondly*, That supposing it to have been the law at the time of the surrender, it ceased, *ipso facto*, upon the island becoming a British

settlement: *Thirdly*, That informalities of various sorts were committed by general Picton, namely, that supposing there is such a practice, still, in every instance in which it is resorted to, the party is intitled to have a defender, and that in this instance no such person was appointed; and further, that the law of Spain only authorized the infliction of torture upon persons of a certain age, and that Luisa Calderon was under the prescribed age at that period: *Fourthly*, that it is incumbent upon me to show that general Picton had jurisdiction over the offence, and that, if it was competent to any person to order this punishment, he was the officer by whose sentence it was by law to be awarded.

These are the different grounds upon which this accusation stands; and as they are distinct in their natures, it will be necessary for me to treat them separately.

The first question on which we are at issue, is whether torture ever constituted, or rather whether, at the time of this transaction, it constituted part of the general law of Spain? Now, I will venture to assert, that I shall leave you without the possibility of entertaining a single particle of doubt with respect to this part of the case. It is not necessary for me to read, passage by passage, the different extracts from the Spanish writers whose treatises are received as authorities in all courts where the Spanish law is administered; it is sufficient for me to state (and which I shall prove), that by the law of Spain, torture is applicable in various instances, particularly in cases similar to the present. I will prove, that in cases of theft, torture is directed by the Spanish law to be applied where the suspicion is sufficiently strong to raise a presumption of guilt: I will prove that the torture may be inflicted either on the petition of the prosecutor, or at the discretion of the judge, according to the circumstances of the case; and in addition to this, I will prove—which will be very material hereafter—that the infliction of torture cannot take place by the authority of the inferior magistrate, but that in every case reference must be made to the superior tribunal, and that on such reference it is the duty of the superior tribunal to order the infliction. These general points I will prove beyond all controversy, from the different writers, to constitute the law of Spain, and to be applicable to the Spanish colonies. For this purpose I shall produce a code or compilation of laws, which contains every instance in which the law of the colonies differs from that of the mother country; and it will appear distinctly, that so far from torture not being a part of the law applicable to the colonies of Spain, it is not only the law of Old Spain, but is expressly directed to be administered in the colonies: I shall show you that there is not a single passage which abrogates the infliction of torture in the colonies, but, on the contrary, that there is a general direction, that where the law is not al-

tered by an express provision applicable to the colonies, reference shall be had to the general law of Spain. Now, gentlemen, not to put the case strongly on the part of the defendant, but rather stating it less so than the evidence would warrant, I venture to assert that as far as relates to the inquiry of what was the law of the island, you will be left without even the most remote possibility of doubt; for that in a case like the present, *i. e.* a case of theft, where the guilty person refused to tell the whole truth, and especially where treasure had been concealed, it was the bounden duty of general Picton to order the question to be applied; unless my learned friend can demonstrate that by the surrender of the colony, the law of Spain was necessarily and *ipso facto* abrogated. But I will not rest my case even on this evidence, strong as it is, for I am enabled to carry my proof still further. I trust I shall not be suspected of entertaining a wish to do what is irregular by reminding you, that this is the second time the present case has been submitted to the consideration of a jury. Upon the former trial, it happened that a witness was called who swore that, under the special and particular code enacted for the government of the Spanish colonies, the law of torture did not exist; we were not at that time provided with evidence to disprove this assertion, and the jury found by their verdict that at the time of the cession of Trinidad, there was no such law in force in that island. From circumstances which afterwards took place, doubts as to the correctness of this witness's representations were entertained, the propriety of the verdict was submitted to the Court, and it was directed that an inquiry should be made on the island of all those practising the Spanish law, to satisfy the Court what was the law at the cession of that colony. A mandamus was sent out, to which a distinct return has been made, comprising the testimony of every professional man who had practised during a long course of years—and particularly of the chief justice of the island—certifying what the law was at the time of the surrender of Trinidad to his majesty's arms. On this part of the case I shall not detain you by going through the testimony of the witnesses, but shall content myself with reading to you the conclusion of the evidence given by the chief justice, as returned to this Court under the mandamus. The chief justice is asked this question, "Can you undertake to say, that the law of Old Spain, with respect to the infliction of torture, was a part of the law of Trinidad, at the time of the capture of the island in 1797?" His answer is this: "Yes; I have read and studied several Spanish authors, on the subject of the law of torture; some of them have written in favour of it—to show the use and necessity of it; others have written against it—to prove that it ought to be abolished: but not one of them has attempted to

"say that it was abolished, or was not in
"force either in Spain or the Indies; and it
"appears strange to me, that the question
"that the law of torture not being in force in
"this island should be agitated. *There can-*
"*not exist at this day a possibility of doubt*
"*that the law of Old Spain, with respect to*
"*torture, was in force in* Trinidad, and was
"part of the law of the island at the time of
"the conquest of it in 1797; unless it can be
"made appear, that Trinidad was not a
"Spanish colony at that time."* This, gentlemen, is absolutely decisive and conclusive.

The present is a charge of illegal conduct on the part of general Picton. It is admitted, that he was bound in the situation in which he was placed to conduct himself according to the law of the island. The law of Trinidad, being different from that of England, must be proved as a substantive fact. The averment that general Picton conducted himself illegally, is an averment of fact to be established on the part of the prosecution, by proof of what was the law; and I therefore deny, that it is incumbent upon me to prove the legality of the act done by general Picton: the prosecutor having averred, that the defendant has conducted himself unlawfully, it was for him to prove, that by the law of Spain no such practice could prevail. But I do not rely on this; I have taken on myself to prove, that by the law of Spain, from the earliest times, torture formed a part of the criminal jurisprudence of that colony, and that it continued to be so at the time of the cession. It is certified by the chief justice to have been the law at that time, and if the question had been submitted to him at the former trial, he would then have certified the same fact. And I hope I shall not be thought to express myself too strongly when I say, that whatever difficulty might have been felt by the prosecutor upon this part of the case, it is certain that he has given no evidence as to the general law of Spain, or as to the law of this particular colony: when, therefore, you find that all the evidence is on the opposite side, I should affront your understandings and insult your integrity, if I supposed that you could entertain any doubt as to the law of torture being in force in Trinidad, unless it was altered by the cession. The evidence all proves that, supposing the law not to have been altered by the surrender, torture was undoubtedly applicable. Now it is necessary here, that you should confine your attention to what the charge is: the question you are to determine is, whether the torture was lawful or unlawful; that is the only question before you; and being so, all the evidence that has been given as to the degree of suffering of the witness is nothing to the purpose. If it was not lawful to inflict the torture at all, it would be immaterial to the question of the defendant's guilt, whether Luisa Calderon had

suffered in the slightest or in the greatest degree. If instead of presenting herself before you in the full enjoyment of youth and health, after the commission of an offence which in this country would have been punished with an ignominious death, she had appeared maimed and mutilated, it would not have at all affected the question before you; if torture was the law of the island, it was the duty of general Picton to enforce it. Then, as to the place of her confinement, and the period of its duration, I am sure that you will do general Picton the justice to recollect that the inquiry submitted to you is not what the sufferings of the witness were, but whether, in point of law, she was exposed to them lawfully or not.

Not to dwell upon this part of the case longer than is necessary, I will only advert to the statement of my learned friend, in opening this case, and which he has followed up by his questions to the witnesses. It seems to have been insisted, that because there was no evidence of the execution of the law, till after general Picton had become governor, there was, therefore, no such law in existence. With respect to that argument, not only is all the evidence at variance with it, but if this were otherwise, I am yet to learn that the disuse of a law constitutes an abrogation of such law. It would be strange, indeed, if, where the law directs magistrates to proceed in a particular manner, their neglect of their duty were to be insisted upon as an argument to show the abrogation of the law, and from which the inference could be drawn, that the law did not exist. The evidence, however, will set this matter at rest; for I shall prove, by the different passages which I shall lay before you, that torture continued to be the law of Spain, and in force at Trinidad, and I shall show not merely that it was so at a period of remote antiquity, but that it continued to be so up to the period of the cession. I shall prove this by reading various passages from different authors, all of whom concur in representing the law to have been so in the colonies, as well as in the mother country; in addition to which, we have the evidence of the chief justice to the same purport. But I will not leave it even here; for I will give evidence that it was the positive law of the colonies, and will read from the authorities a passage, where it is expressly laid down that no law shall cease by disuse; I will show you that the Spanish code provides against the annihilation of a law by its disuse. I will, besides, lay before you the record of the proceedings which took place in the year 1790, in the case of a person who was accused of murder. The inquiry going on in that case as here before the ordinary judge, it appears that the suspicion of guilt was such as to authorize the infliction of torture; and as the judge could not order it of himself, there was an appeal to the superior tribunal. And therefore if it were necessary to prove

* Vide ante p. 603,

that which I contend it is not necessary to prove, this precedent of 1790 becomes an authority directly in point, in any criminal proceeding, under circumstances similar to the present. Avoiding any unnecessary repetition of what I have already said, I will quit this part of the case, with urging, that when you come to consider what the question is upon this criminal investigation into the conduct of general Picton when acting in a public capacity, you cannot but be of opinion that at the period of the cession, the law of Trinidad was such as it is certified by the chief justice to have been. If, as I confidently anticipate, you entertain that opinion, the whole of this charge falls to the ground; for the very essence of it is the illegality of the act; and if you think it not to have been unlawful, you must acquit the defendant.

I now come to the consideration of the second question—a question undoubtedly of novelty, and of the greatest magnitude and importance—*i. e.* whether, by the surrender of Trinidad, the law of that island (which was ordered to be continued in all respects as it had existed under the Spanish government) became altered, so as to render that illegal which would have been legal but for the operation of some principle of the English constitution, with which my learned friend has endeavoured to maintain that the existence of the law of torture, in a conquered colony, is under any circumstances incompatible. Upon this part of the case I could have wished,—if it is now to be the subject of discussion, if the hour is now arrived when you are to decide upon a subject of such magnitude—I could have wished, I say, that my learned friend had gone deeper into the question, and that, instead of contenting himself with round assertions, that by the law of England an English judge cannot inflict torture, he had quoted some principle and some authority laying down the rule for the operation of such principle in distant settlements, as a guide for the conduct of persons entrusted with the administration of the law. I have, however, heard nothing but a bold assertion, that no British judge can enforce torture in any territory conquered by Great Britain, although it should have been, before the conquest, a part of the law of that territory, which law he is ordered to execute as it had been executed under the former government. I have heard no principle or authority cited, and it will be enough for me to state that there is no such principle, no such rule in the English laws, nor any case in which such a principle or rule was ever thought of. And having done so, I shall refer you to the direction you will receive from the noble and learned judge when he sums up the evidence that applies to the questions before you. I contend that the situation of general Picton being such that, in conformity with his majesty's instructions, he was bound to administer the laws as he found them, general Picton

was compelled to execute them whatever they were, and therefore that if torture was the law of the island, he would not have been justifiable if he had omitted to execute it in this particular instance.

In this case, nothing depends upon your opinion as to the humanity or inhumanity of the law. I need not tell you that although torture never existed in this country in the specific shape in which it has appeared and is still to be found in other countries, yet certainly, at one period, it constituted, though under a different form, a part of the criminal law of England. I need not inform you, that by the law as it formerly existed in this country, if a man upon being arraigned stood mute, if he did not assert his innocence, or admit his guilt (although it would have been no unreasonable conclusion to presume a man guilty, who would not assert his innocence) the sentence was (and the judge, whatever might have been his feelings, was bound to enforce it) “that he be sent to the prison “from whence he came, and put into a dark “lower room, and there to be laid naked “upon the bare ground upon his back, without any clothes or rushes under him, or “to cover him, except his privy members; his “legs and arms drawn and extended with “cords to the four corners of the room, and “upon his body laid as great a weight of iron “as he can bear, and more. And the first “day he shall have three morsels of barley-bread, without drink; the second day he “shall have three draughts of water, of “standing water next the door of the prison, “without bread, and this to be his diet till “he die.”* Dreadful as is the recital of this punishment, and horrible as the endurance of it must have been, it did not exist in theory only, for, so lately as the reign of king George the second, upon the very circuit on which my learned friend, Mr. Garrow, practises with so much honour to himself and benefit to his clients, a culprit who upon his arraignment stood mute, was actually pressed to death, and we are taught to believe that the learned person who ordered that punishment to be inflicted possessed as much humanity as any judge of the present day; and gentlemen, if this law had not been repealed within the last thirty years, it might have been the fate of his lordship to have ordered a torture greater than any other that the most inventive cruelty could have devised to extort an answer from a man, who merely would not say that he was innocent. And here I must state that nothing is left to the discretion of the judge. Either in England or at Trinidad, if it be made out that torture is the law of the land, he is bound to enforce it.

This is precisely the situation in which general Picton was placed. Then upon what principle is it that my learned friend says, that whatever might have been the law

* 2 H. P. C. 319.

which authorized this kind of proceeding, and whatever might have been the law in the colonies, it ceased to exist in this particular colony by the mere act of its surrender to the British arms? We know, gentlemen, that at the time of the Union with Scotland, the law of that country was such that any man might have been subjected to the same kind of process as was adopted in this instance. The mode of proceeding to discover truth by torture is derived from the Roman law, and it constitutes at this day part of the judicial system of almost every country in Europe. It has certainly in many respects undergone changes. It was a part of the civil law, and as such, prevailed in Scotland, even after the Union of the two kingdoms, and every individual who went into Scotland rendered himself liable to the infliction of torture; and if he had committed a crime in which it was applicable, he must have undergone it. It was only by the express provisions of an act of parliament which was passed by the legislature *some years after the Union*, and which act recognised the existence of the law and practice of torture *up to that period*, that the torture was abolished, that statute being a legislative admission that nothing short of the legislative authority could annihilate it. Here, therefore, we have a positive act of parliament which shows that where torture had existed in another country, it did not cease by that country being united to England, but that it was necessary to pass a specific act of parliament in order to put an end to it. Seeing therefore, gentlemen, that my learned friend has not developed, explained, or discussed any principle, that he has not favoured us with any other authority than his own bare assertion, however respectable that bare assertion may be, I contend that I have done more than enough to overturn his position; and I confidently submit to you on the part of general Picton, that, if by his majesty's instructions he was directed to maintain the laws of the island of Trinidad after the capitulation, precisely as they had been theretofore, he would have been guilty of a breach of his instructions, if, torture being a part of the law of the island, he had not enforced it in a case in which he was called upon to enforce it, and in which it was fitting that it should be applied.

But, gentlemen, after all that I have stated, —conclusive and satisfactory as it must have been to your minds—it is my duty to inform you that it was suggested on a former occasion, that as the present is a case of great magnitude and importance, it might be deemed proper that a special verdict should be delivered by you—

Lord *Ellenborough*.—I wished that observation to proceed from the counsel. There certainly will arise in the present case points of much novelty and vast importance: it

would be for the public interest that these points should undergo a more solemn investigation than they can possibly receive upon this occasion; and they should be discussed in a way which will admit of an appeal to the judgment of a superior tribunal. I have no personal wish upon the subject; but, under all the circumstances, it appears to me that the better course will be to have a special verdict if you can agree upon the *facts*.

If you cannot agree upon the facts, I know my duty, and shall discharge it. I shall lay before the jury the facts as they appear in evidence, and shall state to them my view of the law applicable to those facts: I shall most readily perform that part of my duty; but I think for the reasons I have already given, that it will be more for the public interest that a special verdict should be returned.

Mr. *Garrow*.—Perhaps, as your lordship has represented the propriety of a special verdict being delivered, it may be convenient to Mr. Dallas, that I should now state what I have to say upon the subject. Upon the former occasion we were very much embarrassed by taking it for granted that the existence of the law of torture would have been proved as clearly by the evidence, as Mr. Dallas had stated that it would be; but in the result it did not appear to be made out. It is not my wish that any *opinion* should be given, but rather that the *facts* of the case should be stated upon a special verdict.

My learned friend has expressed a wish that I had gone more deeply into the subject: it was not because I *could* not argue it that I *did* not:—the mere exercise of my memory would have enabled me to have done so, for I could have repeated all that fell from my learned friend Mr. Nolan in the course of his argument (which was certainly one of the ablest I ever heard, and I believe this is the unanimous opinion of all who heard it); but I thought it would be improper to anticipate the defence.

When all the evidence shall have been gone through, if your lordship sees any point upon which a question of law, novel and important, is likely to arise, I shall have no objection to the jury finding such facts as will (if proved) be sufficient to raise the question, but at present I cannot say that I consent to a special verdict.

Mr. *Dallas*.—Gentlemen of the jury, my learned friend must have greatly misunderstood me, if he supposes that I thought him not able to argue the points of this case. Whether he has had recourse to the very able argument to which he has alluded, or whether his other vocations have permitted him to enter into any research, sure I am that there is no man more able than he is to argue that or any other subject. When I said that he had contented himself with making a bare assertion, I meant that he had cited no au-

thority, that he had adduced no argument for me to grapple with, and not that he had stated his case more superficially than he ought to have done. I shall here quit this part of the case with repeating that the points on which I insist are, the original existence of the law of torture up to the period of the cession, and that the law of torture was not in any way altered or affected by that event.

I now come to a new ground of defence: and for the purposes of argument, I will admit that torture was not a part of the law of the island, and that the chief-justice and every professional man who has given evidence has been mistaken. Still, admitting all this, I contend upon the established principles of law and their application in a case of this sort to the situation in which general Picton was placed, he is entitled, under the circumstances of the case, whatever may have been the law, to a verdict of acquittal. And, subject to the correction of his lordship, I assert that supposing either that torture never was the law of Trinidad, or that if it was the law, and had been unchanged by the cession, that general Picton had *misapplied* it, still that it was a mere mistake upon a matter of law, and that general Picton being placed in a judicial situation, and having acted from *mere error of judgment*, and not from *malice*, cannot be convicted upon a criminal charge: I state this upon a fundamental principle of the law of England, which, when examined, will form a full and complete defence for general Picton.

The charge against general Picton is, that he has illegally and maliciously caused this person to be tortured. Now,—putting aside, for a moment, the question of malice, and how far it is in point of law necessary to prove the existence of a malicious intention, only to return to the same subject hereafter,—allow me to remark, that, in point of reason, there is a material distinction between the two terms *illegality* and *malice*. It may happen to any man—it might happen to you—charged with the administration of the law of a foreign country, to be mistaken in a great variety of instances; and in every such instance, such person would have acted illegally; but assuredly it never could be contended that mere illegality was not perfectly consistent with purity of intention. By imputing illegality to a person administering the law, you impute no moral turpitude, you only ascribe to him an ignorance of that law with respect to which he may have used his utmost endeavours to inform himself. But if you say that he has acted maliciously, you presuppose that he has a perfect knowledge of the law, and that the act was done in opposition to his own consciousness of what the law actually was. No two things can be more contradictory than to impute to a man that he has done an act unlawfully, and to charge him with having done it maliciously, and with an intention to oppress.

I know perfectly well that there are several cases in which the allegation “maliciously” is taken to be a legal intendment; i. e. that the law infers malice from the illegality of the act done. There are many cases of this description, but there are also many of a contrary description; and the question will be, to which of these two classes are we, in deciding upon the conduct of general Picton, to refer the present case. One of the first principles of natural justice, and which the feelings of every man suggest to him is, that no man who has used his best endeavour to inform himself, ought to suffer for an error in judgment. Nothing consequently can be more repugnant to the first feelings of justice implanted in the bosom of every person, than that a military man, like general Picton, who, after a long course of service, is, on account of his merit in his profession, placed in a situation that is new to him, and who, on the requisition of the ordinary magistrate, orders the enforcement of that which he is informed and naturally supposes is the law, and who, in so doing, is not actuated by any impulse of malice; (for the facts exclude the slightest presumption of malice).—Nothing, I say, can be more repugnant to the feelings of every man than that general Picton, so situated, should suffer for a mere error in judgment. And I find it laid down—if it were necessary to resort to authority on the subject—that by the law of England a broad line of distinction is drawn between civil and criminal responsibility, and that there are many cases in which persons are civilly responsible, on an action to recover damages, for conduct alleged to have been illegal, but in which they are not liable to a criminal prosecution. For it is said, that “It is certain that no man ought to suffer *criminally* for an error in judgment; but it is equally just that he should make reparation *civilly* for the damage which other persons have suffered by such his error.” This I find laid down by lord-chief-justice De Grey, in the case of *Miller v. Seare and others*.* I do not mean to disguise the fact that the universality of this observation has been broken in upon. Where an act of parliament has marked out certain duties to be performed by a justice of the peace, I am aware it has been decided that it is sufficient to sustain a charge against him, that he has acted unlawfully. I do not pretend to deny that the universality of this doctrine has been broken in upon. It becomes therefore necessary that I should be correctly understood, and that I should confine the doctrine to the ground, on which, on the authority of decided cases, it is fully established.

Without pushing the doctrine to the extent that no man can be punished except for an act accompanied with malice, and that no man can be punished for mere negligence, I shall

* 2 Sir W. Blackst., 1141.

content myself with stating, what cannot be denied, namely, that in every instance where a man acts (in the situation which you now hold) as jurymen—that in every instance where an individual acts (in the high situation in which his lordship is at present acting) as a judge—that in all cases where an individual is invested with general judicial authority in and for the service of the public, if he acts erroneously but illegally—nay, I go farther, and say if he acts even maliciously, he is not liable to a civil action, and still less to a criminal prosecution. This is a proposition which, in the cases of judges and jurors, is so incontrovertibly established, that I shall not waste time by referring to authorities to show the ground upon which it stands; they have upon a former occasion, been quoted in detail, and have never been doubted or questioned. I therefore confidently lay it down, that wherever a person, invested with judicial authority, mistakes the law, he is not liable either to a civil action, or to an indictment.

I will now, in illustration of this position, advert to one or two instances to which I referred on a former occasion. One is the case where the judges, sitting at the Old Bailey, had committed certain jurymen for the non-payment of a fine imposed upon them because they would not find a particular verdict as the judges wished them. A writ of Habeas Corpus was sued out by the jurymen so committed, the result of which was, that they were discharged. An action was afterwards brought against the persons who had committed them, but on the ground that they acted in their judicial capacity (the lord mayor and aldermen being named in the commission, and consequently invested with judicial power), it was held that the action would not lie, although their conduct was clearly illegal,—and still less could they have been liable to a criminal prosecution,—there being a number of cases which, on the ground of public policy and convenience, show that no man, holding a judicial situation, is answerable for a mere mistake in point of judgment.

On this part of the case, I submit that it is material that you should bear in mind that no express malice is imputed to general Picton: All the facts and circumstances of the case exclude the possibility of the existence of malice. Here is an obscure person, living in a state of concubinage with a man, in whose house a very extensive robbery is committed. She is suspected, and brought before the governor, who refers the case to the ordinary magistrate; and, it being afterwards suggested by that magistrate, that, in his opinion, the application of a slight torture would be the means of discovering the truth, the governor assents to the proposition, being informed by the magistrate that it is conformable to the law of the island. All that general Picton has done, has been to say to the inferior magistrate “Do that which you state to me to be legal.” You see, therefore, that

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the circumstances are such as evidently to preclude every idea of malice. When you consider what the situation of this young woman was—that she was in the very lowest rank of life—you must follow the natural suggestions of your own good understandings, and conclude that she could not possibly have been, in the eyes of general Picton, either politically, or in any other way, an object of personal enmity or malice. There are no possible grounds for imputing to general Picton a corrupt or malicious intention. Whether he was right or whether he was wrong, he unquestionably meant to apply what he considered he was authorized by law to apply; and being placed in a judicial situation, if he was wrong (which I deny), still general Picton, for a mere error of judgment, cannot be found guilty, and subjected to punishment as a criminal, for that would be to confound two things which are diametrically opposite and irreconcilable — unintentional error and premeditated guilt.

Whatever may be his lordship's opinion on this part of the case, it is in another point of view material that you should be satisfied, that in the exercise of the powers intrusted to him, the conduct of general Picton was not malicious; for it will not be denied that he was bound to execute the law as he found it, and as it was represented to him to be; and that what would have been a justification to a Spanish judge who had acted in a similar manner, would be a justification to him: it follows, therefore, of necessity, that whatever would be a justification of the act in the place where it occurred, must be equally so in the country where the validity of that act is tried. It is enough for my argument to show, that if a judge has acted erroneously through ignorance, he is by the laws of Spain wholly excused. By the laws of Spain there is a difference with respect to the responsibility of a person in a judicial situation which is imposed upon him, and one which he has voluntarily undertaken, or sought after. In the former case the law requires that before a judge can be punished for any act by him committed, he must be proved to have acted maliciously. I say, then, that general Picton is entitled to the full benefit of that Spanish law, if the act was not done maliciously; and I contend that as far as purity of intention goes, general Picton is entitled to his acquittal. I shall refer you to the law of Spain, where you will find, that in no instance is a person in a judicial situation liable to make compensation unless, he has acted maliciously, that is, in no case is he liable in a situation, the duties of which he is called upon by his sovereign to fulfil. When I have laid the law before you, and given evidence of its validity, I shall submit, that whatever may be your opinion as to the averment in the indictment, still under the law of Spain my client is protected, unless it can be shown that he was actuated by malice.

3 H

I hope, gentlemen, you perfectly understand what I have endeavoured to impress upon your minds, namely, that there being no malice on the part of general Picton, and he being placed in a judicial situation by the *command* of his sovereign, was bound to enforce the law as it was represented to him; and that even if he has been mistaken as to the law of Spain, he is nevertheless entitled to an acquittal. But I feel that it is necessary to advance one step farther, and to prove to you that general Picton had jurisdiction in the particular instance. It may be pressed upon me in the reply, and I will not attempt to conceal it from you, that doubts have been thrown out from high authority on this part of the case: it is therefore necessary for us to examine what the situation was in which general Picton was placed.

Upon the surrender of the island to sir Ralph Abercrombie, general Picton, who was serving under him, was appointed to the government of it. I shall adduce evidence to this point, and show that the instructions to general Picton were that, unless where expressly altered, the laws of the former government should continue in full force. It consequently becomes necessary to inquire what was the law *before the cession*, upon subjects similar to that now under your consideration. You will learn, that in every case which called for the infliction of torture, an appeal to the superior tribunal was necessary; that the infliction of torture could not take place but by the order of the superior tribunal; and therefore that if such a case as this, which took place before Begorrat, had occurred anterior to the cession, torture could not have been applied by Begorrat, but the case must have been referred to the superior tribunal. The superior tribunal was not situated upon the island: it was the royal audience of the Caraccas, which was a court upon the Spanish main. It would have been absolutely necessary to have referred the case to that authority for the inflictive sentence; but by the conquest that appeal was abolished, because the royal audience of the Caraccas could retain no authority over that settlement which had thus passed, by the right of conquest, from the crown of Spain to that of Great Britain. But it will, possibly, be asked, "How do you show that the powers which belonged to the court of the royal audience of the Caraccas were given to general Picton? You must show that they were conferred upon him, or that they necessarily devolved upon him." If the inquiry stood upon necessity alone, it would be apparent that the powers of the immediate court of appeal would have vested in the governor; for under a general law, admitting of an appeal, the party to enforce that law is the appellate jurisdiction; but the appellate jurisdiction having, by the conquest of the island, been annihilated, it follows, as of course, that the powers of that court must devolve upon the governor, and

that he stood precisely in the same situation as, previously to the conquest, the royal audience of the Caraccas had been placed in; for in whom but the governor could the authority of the tribunal have become vested? I will not, however, leave this part of the case to rest upon the result of any general reasoning, however conclusive; for I shall show you, that not only by the instructions of general Abercrombie, but also by the instructions of his majesty, it was made the subject of an express order, that he should continue the same courts as had before exercised authority—that he should administer the law as it had been before administered; and it was expressly provided, that those courts should continue upon the same footing upon which they had before stood, and that in all civil cases the appeal should be to the king in council, but in all criminal cases to the governor. Under the authority of these instructions I contend that the governor became the court of appeal in every criminal case, and therefore that upon the principle of the Spanish law, which provides that torture cannot be inflicted without an appeal to the superior tribunal, the power of sanctioning its infliction belonged to general Picton, which led Begorrat to address the requisition to him as being the superior court, and which authorized him, upon such requisition, to issue the order for its infliction. I contend not only that general Picton had jurisdiction, but also that he was the only person who could, by possibility, have jurisdiction to issue the order in question; and therefore, unless I am mistaken as to the general nature of his powers as they appear upon the evidence, I have shown him to have been invested with general criminal jurisdiction, he having been constituted the supreme criminal court, the appeal in civil causes being to his majesty in council.

It is said, that this is a doctrine of novelty, and fit to be examined, and to be argued in the shape of a special verdict, not now, but when the court is full, and with the ulterior benefit of taking the judgment of the House of Lords; the question is admitted to be of so much nicety as this. But if general Picton was invested with general criminal jurisdiction, who was to decide any question of law in the island but general Picton? Will any man tell me, that a question of law could have been decided by any other authority? If torture had ceased to be consonant to the law, he decided erroneously; but if he had decided erroneously in any other respect, still if it was on an appeal coming before him within the circle of his jurisdiction, though it should turn out that he was mistaken, he is not responsible for his erroneous judgment. I therefore contend, on the grounds I have stated, that a verdict of acquittal must be pronounced.

Before I quit this important part of the case, namely, the extent of the governor's jurisdiction, I will trouble you with one or two more observations, and one or two only.

You understand, that, during the Spanish government the appeal from all sentences was to the royal audience of Caraccas. I do not mean the appeal in the last instance; it was a court having jurisdiction in interlocutory proceedings. In all cases in the progress of the inquiry the superior court can alone authorize the application of torture, and therefore, upon the principle that a court having superior authority must lend its aid in the progress of an inquiry, the royal audience of Caraccas, upon a representation made to them, were to authorize the infliction of torture, and therefore, you will find that in the case which will be laid before you, such a reference was necessary to be made. In the present case, the consequence would have been, if there had been no conquest of the island, that the reference would have been made to the royal audience of the Caraccas, and that court would have authorised the application of the *question*, to ascertain the truth, and on the *final judgment* there would have been an appeal. There did apply, with reference to the appeal to the royal audience of Caraccas, that principle which I contend applies here; there was an appeal to that which was the immediate superior tribunal, and I say, that general Picton was invested with all the powers which were incident to that tribunal before the conquest. It may be in the recollection of his lordship, that so strongly was this principle established, that in a proceeding anterior to the cession of the island, there had been a judgment which was transmitted to the audience of the Caraccas—there had passed a sentence that was depending at the time of the conquest, and general Picton was ordered by the direction of his majesty's privy council to enforce the sentence of the court of Madrid. From the whole, it follows that general Picton had jurisdiction; and though he might have been mistaken, still I contend that if there was no malice, he cannot upon a criminal charge be convicted.

But I understand that other objections are to be raised with respect to his conduct; I understand it is to be said that even supposing torture to have been the law of Spain, still that law required certain formalities to be observed, which upon this particular occasion were neglected. And first, that this young woman had no person appointed to defend her; whereas, she was, by the law of Spain, entitled to have a defensor. Now, I should be glad to know where, in the proof on the part of the prosecution, you find any evidence that such was the law of Spain. I have always understood that, be the inquiry civil or criminal, nothing can be taken for granted without proof:—The law of our own country we are bound to know, but that of a foreign country is required to be proved as a matter of fact; and I own I could have wished that, before we had been thus assailed by such an objection, some evidence had been laid before you that such was the law of Spain.

With regard to the necessity of appointing a defensor, I know that there has been in the evidence testimony on one side and on the other. I know it has been insisted, that there was no person to defend her; and I know that it has been said, she was not of sufficient age, at the time the torture was inflicted, to be the object of such a punishment. But of the latter fact, no evidence has been laid before you, excepting a single answer of the girl herself, saying that she was only fourteen years of age. We are, therefore, in the dark as to the fact. The indictment is framed with reference to the laws of Spain, and avers that she was under the age of fourteen years. How have they proved what the age was, at which, by the laws of Spain, torture might be inflicted? They have not proved that it was necessary for her to have been of the age of fourteen years; but I do not mean to defend general Picton upon their defective proof; for, upon looking into the evidence, you will find that the appointment of a defensor belonged to the inferior judge; it belonged to Begorrat: all that general Picton had to do was, to see that there was a probability of guilt to authorize the infliction of torture. If, therefore, instead of the punishment being conducted as it was, it had been conducted by Begorrat with the utmost degree of cruelty, general Picton, who could not have known any thing of the manner in which it was inflicted, and who was by the law forbidden to be present, could not, in any respect, be considered responsible. If the inferior magistrate did not execute his duty properly, it is not to be imputed to general Picton, but to the inferior magistrate. If she was entitled to have a person appointed to defend her, it was the duty of the inferior magistrate, and not of the governor, to have attended to it. You will find that he did reserve the power of appointing a defensor for her; and if she had not one, to what was it owing? It was, because she had applied to several persons, and none of them would defend her; it was not for Begorrat to compel a person to become her defender against his inclination. You will find in the testimony of the first witness, that she refers to a person who was named afterwards; but indeed this is wholly immaterial to the course of my argument, because all I am bound to contend for is, that it was not incumbent on general Picton to appoint such a person. And upon the point respecting her age, I will not, at the present moment, run into any lengthened observations; for if I am to defend general Picton against this charge, founded upon the allegation of her non-age, it must be the subject of a great deal of evidence. I am aware that originally there were persons who swore that she was under fourteen years of age; she has herself said to day that she was under fourteen years of age, but I shall prove by the entry of the baptism of this girl, that she was upwards of fifteen years of age when the robbery took place; and I shall prove, by

the testimony of the person with whom she lived, that she had lived with him in a state of prostitution for two or three years, and I have further evidence to the same purport. If it was the duty of any person to ascertain what her age was, it was the duty of the inferior judge; and you will find in the evidence of Begorrat, that they commenced the proceedings with a question as to her age; that she stated that she was upwards of fourteen, and that it was upon the statement that she was upwards of fourteen years of age, that it was considered that she was of the class of persons to whom torture might be applied, and that the application for inflicting it was made to general Picton. But every thing that has been said upon the subject of her age is quite beside the question; for what is the evidence on which the order issued? The order issued upon the evidence delivered by her own mouth, and if a hundred witnesses were to come and swear she was not of age, it would signify nothing. If it was necessary to go into evidence, I should prove that she was upwards of fourteen years of age, or at least that she so represented herself before the criminal judge, and of course that would dispose of the question as to her minority.

I have now, gentlemen, as well as I have been able to do so, gone through all that I had to submit to you on behalf of general Picton. Having already taken up so much of your time, I will not enter into any recapitulation of my statements and reasoning; but for the sake of clearness and that you may fully understand my argument I will just sum up the points on which I mean to insist.

First, I contend that it was a part of the law of Spain, that torture should be applied to persons who had been guilty of robbery, in order to procure a confession not only of their guilt, and a discovery of their accomplices, but of the place where the treasure had been concealed, and of other circumstances connected with the subject of the investigation. *Secondly*, That taking the law to have been such previous to the conquest, it was not changed or affected by the mere operation of that event; in other words, that what had been the law before the cession of the island, was not, upon that event taking place, *ipso facto* abrogated or superseded. *Thirdly*, That by his majesty's instructions general Picton was directed to continue in force the old laws of the island as they had been executed previously to the surrender. *Fourthly*, Even supposing my friends should succeed in proving their case, the legal justification which we, on the part of general Picton, set up, will remain, *i. e.* that general Picton was only bound to decide as his lordship and the other learned judges of this court will decide if you should return a special verdict—viz. according to the best of his judgment; and that if his decision has been erroneous, he is no more liable to a criminal charge on

that account, than their lordships would be if they were, upon a special verdict, to decide against general Picton, and the House of Lords should reverse their judgment. I contend, that general Picton is no more liable to a criminal prosecution for a mere error of judgment than any of the learned judges who preside in this court. *Fifthly*, I insist that he had judicial power *generally*; that he was the superior court for the execution of interlocutory orders, and the final court of appeal in all criminal cases; that the whole proceedings in the case of Luisa Calderon were regular, but that if they had not been so with respect to the non-appointment of a defensor, and the age of the party, still these were mere irregularities, and there being no malice and the court having general jurisdiction constitute sufficient defence. I insist on general Picton's having been clothed with complete protection under the commission constituting him the superior court of interlocutory examination, as well as the final court of appeal in all criminal cases; and I contend, that if in the exercise of such his judicial authority, he has acted erroneously, he is liable neither to an action nor to an indictment.

These are all the observations I have thought it my duty to make on behalf of the defendant. You will dispassionately consider all the circumstances of this case; and in disposing of it you will, I am persuaded, divest yourselves of all prejudice with respect to the nature of torture or the moral justice propriety or expediency of inflicting it in any case: confining yourselves as men of sense and men of honour to this simple question—whether in a case with respect to which general Picton cannot possibly be supposed to have had any malicious purpose to gratify, but where being told by the inferior judge that torture was the law of the island he, merely acting upon that information ordered its infliction, ought to be subjected to punishment on the ground of criminal intention. Such is the question you have to decide, and I am sure you will decide it impartially. I conclude with contending that the whole proceedings were strictly regular and that in every view of the case general Picton is entitled to a verdict of acquittal.

EVIDENCE FOR THE DEFENDANT.

The return to the last writ of mandamus was put in.

The evidence of *Manuel de Garmondia* was read; see it *antè* p. 594.

The evidence of *Josef de Orosco* was read; see it *antè* p. 595.

The evidence of *Francis Lubault* was read; see it *antè* p. 595.

The evidence of *Francisco de Castro* was read; see it *antè* p. 596.

It was then proposed to read the ex-

hibit (B.) annexed to the return to the second mandamus; but on account of the great length of this document the concluding part containing the sentence only was read; see it *antè* p. 722.

Mr. *Garrow* requested a description of the person who pronounced the sentence, and was informed that it was the ordinary judge of the first election.

Mr. *Lowten* was then desired to proceed with the depositions, and he accordingly read the remainder of the evidence under the return to the second mandamus.

Mr. *Stephen*.—I shall now trouble your lordship with reading several extracts from the Spanish law books. The first we shall read is from the *Curia Philippica* 229, No. 4.*

[A translator was sworn, and it appeared that he had taken certain manuscripts and compared them with the originals at the Crown-office.

To the Witness.—Were the papers delivered to Mr. Forbes as extracts and translations of these books, faithfully made and translated?—*Answer*. They were.]

THE FOLLOWING PASSAGES WERE THEN READ:

Extract from "*Curia Philippica*" fol. 230 No. 12. [See it *antè* p. 512.]

Extract from "*Elizondo Practica Universal Foransi Juicia Criminal*." fol. 277, No. 12, vol. 1. Chapter of Torments. "Appearances to authorize it should be weighty, apparent, urgent and probable; and not light, doubtful, and equivocal; except in hidden crimes, and difficult of proof; such as theft, sodomy, crimes committed at night, and coining, in which the slightest are sufficient to authorize a departure from the ordinary forms of law, and the receiving of such proof as can be met with."

Extract from *Bobadilia de la Politica*, fol. 962, No. 16. [See it *antè* p. 513.]

Extract from *Colom*, vol. 1, fol. 231. [See it *antè* p. 513.]

Extract from *Institutions of the Laws of Castile*, fol. 342, 343. [See it *antè* p. 544.]

Extract from *Compilation of the Laws of the Indies, by order of his Catholic Majesty Charles the Second, &c.* vol. 1, p. 126. [See it *antè* p. 542.]

Extract from *same*, vol. 1, p. 136. [See it *antè* p. 542.]

Extract from *same*, vol. 1, p. 198. [See it *antè* p. 543.]

Extract from *Politica Indiana*, vol. 2, p. 271. [See it *antè* p. 543.]

Extract from *Institutions of the Laws of Castile*, fol. 341, chap. 6. [See it *antè* p. 544.]

Extract from *Bobadilia*, fol. 970, No. 31. "In what touches the satisfaction that a judge in conscience ought to make in the above cases, I say that if through malice he prejudiced or injured the party he ought to be obliged to satisfy and remunerate him fully to the extent of the injury: but if through ignorance he may have occasioned the said detriment there is this distinction; if the judge aspired to and sought the office he is subject to costs and damages; but if on the contrary he was compelled to accept it, he shall not be obliged to pay any thing whatever."

Extract from *Curia Philippica*, fol. 231, no. 6. [See it *antè* p. 512.]

EXTRACTS READ ON THE PART OF THE PROSECUTION.

[Mr. *Newman* sworn, and examined.

Were you employed to make extracts from the Spanish law-books?—Yes.

Have you made fair translations of them?—Yes.

Are they faithfully extracted and correctly translated?—They are.]

Extract from *La Recopilacion de las Indias*, law 4th, vol. 1st, page 396. "That with regard to the removal of causes the alcaldes shall observe the laws of our kingdom of Castile. Whereas in some cities where there are criminal courts of justice or where the judges (oidores) act as alcaldes, many causes and matters occur, in which the ordinary judges at first proceed, and which by so pending before them are removed by the alcaldes or judges (oidores) of our audiencias and which is extremely hurtful to the pre-eminence of the alcaldes in ordinary and other justices: therefore we ordain, that with regard to this subject henceforth shall carefully be observed and fulfilled what has been enacted and prescribed on this head by the laws of our kingdom of Castile and that the same shall not be transgressed in any form or manner whatsoever."

Extract from *Curia Philippica*, part 3, sect. 16, no. 17, page 231. "If the delinquent confesses the offence under torture, such confession does not stand good, unless he voluntarily and spontaneously ratifies, at the expiration of a natural day of twenty-four hours, what he confessed under torture in a room or place where no instruments of torture are found, and without his being tortured and before the judge, who in order to obtain the ratification is merely to ask and say to the delinquent in presence of the scrivener that he well knows that he was tortured and what he said under the torture and that he may now speak the truth without

* See it *antè* p. 512.

the torture; the ratification being put down in writing, according to a law of Partida (g), because, according to this law, it is necessary to have a subsequent spontaneous ratification of every confession made under torture, and without such ratification it does not stand good, although at the holy office of the inquisition, the ratification of the confession made under torture, is generally postponed until three days are elapsed, in order that it may be better made without any painful sensation thereof, as is said by Simoneas (h)."

Extract from *Curia Philippica*, fol. 230. "The species of torment, and the quality, is not determined by the law, but left to the arbitrament of the judge, according to the complexion of the delinquent, the crime, and its appearances, though he should not make use of new torments, but the usual ones, such as dropping water, small cords, and pulleys."

Extract from *Curia Philippica* fol. 229. "The torture is inflicted in order to verify and prove the offence, there not being full evidence of it; because in the latter case it cannot be inflicted: and should the torture be applied, the judge is liable for all the losses and damages arising therefrom, but the evidence remains in full force and vigour, although no protest should have been entered, and on the strength thereof, the condemnation in ordinary punishment is to follow, as is observed by Antonio Gomez, and Covarrubius:—And thus if an offence can be proved, no torture ought to be inflicted, according to Julio Claro."

Extract from *Elizondo's Universal Practice* vol. 1, no. 18, page 262. "When the offender is lodged in prison, the judge must proceed to take his confession, in the presence of a scrivener; and it is indispensably necessary, that the names of the witnesses, who are to depose against the offenders, be communicated to him at the time when his declaration is taken: and it is further to be observed, that in case of his being under age, he must be provided with a curator."

Extract from *Curia Philippica*, part 3rd, sect. 16, no. 15, page 231. "Against the sentence of torture, an appeal may be interposed, and it cannot be inflicted in spite of such appeal, because the grievance thereby sustained, cannot be amended by the definitive sentence; this, however, is to be understood of a lawful appeal interposed on this ground, that the cause and indications of guilt are not well established, because if the appeal be frivolous, the torture may well be inflicted, notwithstanding such appeal, in order that the punishment of the offence be not protracted, as appears by a law of Partida (i), and is conformable to practice."

Extract from *Colom's Instructions to Escribanos*, &c. vol. 1, lib. 3, page 250.

"From a criminal sentence must be appealed within the same time, and with the same formalities which I have mentioned with regard to the appeal in civil causes, although the superior courts are accustomed to admit the appeal, even after the legal form of interposing the same has elapsed, and to issue summonses against the prosecutors, and a mandamus to send up the proceedings, on an attested copy of the sentence being produced to them, and at times without it, in order to decide on the grievances stated in the bill of appeal. And from a sentence which adjudges any corporal punishment, any person whosoever, besides the party and his attorney, may indistinctly appeal, provided the offender ratifies such appeal, and if the appellant be his relation, even without his ratification, on account of the injury which may accrue to him, according to the law 6, tit. 23, part 3.

Extract from *Colom's Instructions to Escribanos*, vol. 1, book 1, page 49. "In case of the parties being desirous to appeal from the sentence, they have five days allowed them, within which time they must interpose the appeal, and in which days the day of notification is included, according to the law 1, tit. 18, book 4, of the Recopilacion, and it is received in practice that the said five days begin to run from and since the hour when the sentence was notified, and so on from moment to moment, although the said days should be holidays."

Extract from *Curia Philippica*, P. W. tit. 2, no. 5, page 25. "The mandamus is to be issued, in order that a transcript be given of the proceedings, and not the original, except it being in the place where the superior court is sitting, unless it be a summary process, or another case in which a sentence is to be carried into execution, notwithstanding an appeal, because in such cases, although the superior court be sitting in the same place, a copy is to be given, and not the original, in order that the execution may not be obstructed, unless judgment shall already have been carried into execution, because then the said cause ceases, as appears by a law of the Recopilacion de Castilla."

Extract from *La Recopilacion de las Indias*, law 29, vol. 1, p. 402. "That the viceroys are not to sign the sentences pronounced by the alcaldes in any criminal cause or matter, although they are present to see the cause tried, and put to the votes.

The viceroys are not to sign the sentences, found and pronounced by the criminal justices (alcaldes del crimen) in any criminal cause or matter, but the alcaldes are alone to sign them, although the viceroys are present at the time when such causes are put to the vote, unless in the case mentioned in the following law."

Extract from the *Politica Indiana*, composed by Don Juan y de Solergano y Pereira,

member of the supreme council of India and Castile, &c. Book 5, ch. 34, no. 3, p. 276. "And by the said prescript (cedula) of 1603 it is expressly determined, that the viceroys and governors are not in any manner whatsoever to meddle with or interfere in such matters as concern the administration of justice; since they are committed to the audiencias or courts of justice, which are not by any means to be impeded or obstructed by them in the administration thereof, which is also expressly enjoined to them by their instructions."

Mr. Garrow.—We propose to add some evidence out of the exhibit B.

"Examination or confession" &c [*Vide antè* p. 639] read, ending with the signature "Francisco de Castro," [*antè* p. 646.]

Extract read from Exhibit B. "Whereas there not being," [*vide antè*, p. 649.] down to the signatures "Licentiate JOAQUIN GUILLEN, Castro", [*antè* p. 650.]

Mr. Garrow.—It appears, by the subsequent proceedings, that this person who had been thus appointed, acted as his counsel.

Mr. Lawes.—We propose to put in the articles of capitulation.

The articles of capitulation were read, See them *antè*, p. 493.

General Abercrombie's instructions to Lt.-Col. Picton were read: see them *antè*, p. 495.

Mr. Dallas.—We shall now read general Abercrombie's instructions to Mr. Nihell.

Mr. Garrow.—I do not see how his letter to Mr. Nihell can be evidence; I have no objection to its being read; but I doubt whether it can be made evidence.

Mr. Dallas.—We read it in order to prove the order, that in all criminal cases the appeal should be to the governor.

Lord Ellenborough.—It is general Abercrombie's promulgation of the law. By the instructions already read, we find that the old laws were to continue: we shall now see whether any and what alterations were made.

The exhibits F. and G. annexed to the first mandamus were read: see them *antè*, pp. 444, 446.

The fifth and seventh articles of his majesty's instructions to the defendant were then read: see them *antè*, p. 500.

The following letter from lord Hobart, one of his majesty's principal secretaries of state, to the defendant was read.

"Downing-street, 29th June 1801.

Sir; The ability and zeal you have uniformly shown in administering the affairs of the island of Trinidad, and the honourable testimony borne to your conduct by the commander-in-chief of his majesty's forces, in

the Leeward and Windward Caribbee islands, on every occasion, have induced his majesty to appoint you to the civil government of that valuable island; and I have the satisfaction of inclosing herewith your commission, and the instructions under his majesty's sign manual for your guidance in executing the duties of that office.

(Signed)

"HOBART."

The exhibit B. annexed to the first mandamus was then read [*See it antè*, p. 328] down to the order for the infliction of torture on Luisa Calderon [*antè*, p. 341.]

Mr. Garrow.—There was no torture ordered to be inflicted upon Carlos Gonzales the, supposed principal.

Mr. Lawes.—He was found guilty, and banished.

Mr. Garrow.—Read the judgment against Carlos Gonzales.

It as read accordingly: see it *ant* p. 412.

Mr. Garrow.—We shall now read some passages from these documents.

The declaration of Dr. Williams, and the paragraphs following the same, and ending with the citation of Don Juan Bermudes, were read [*Vide antè*, pp. 360, 361.]

The three first paragraphs in p. 362 were then read.

The examination of Francisco de Castro (under the first mandamus) on January 12th 1805 was read [*Vide antè*, p. 236, 242.]

The proceedings on January 22, 1805 [*Vide antè*, p. 248] and the exhibit C. [*Vide antè*, p. 436] were read.

The proceedings on January 23 [*Vide antè*, p. 249] were read.

The proceedings on January 31 [*Vide antè*, p. 254] down to the answer to question 71 [*Vide antè*, p. 255] were read.

The three first questions and answers, on the re-examination of Francisco de Castro, May 2, 1805, were read [*Vide antè* p. 273.]

The proceedings on May 9th, 1805 were read, down to the end of Begorraf's answer to question 23. [*Vide antè*, pp. 285, 292.]

The proceedings on May 13th, 1805, were read, down to the end of Begorraf's answer to the first question on his cross-examination. [*Vide antè*, p. 293.]

Lord Ellenborough.—Evidence of the contents of the proclamation has already been given by the production of the instrument.

The ten next subsequent questions and answers were then read. [*Vide antè*, p. 294.]

The four first questions and answers,

on the examination of Francisco de Farfan, were read. [*Vide antè*, p. 299.]

Lord *Ellenborough*.—This too, is only a commentary on the instrument, which has been itself produced: it does not go any farther.

Mr. *Dallas*.—These questions were put on the part of the prosecution.

Lord *Ellenborough*.—By whomsoever they may have been put, they are not evidence.

The reading of same evidence was then continued, down to the end of the answer to question twenty [*Vide antè*, p. 301.]

The examination in chief of the hon. John Nihell (July 22nd 1805) was read, as were the first seven questions and answers, on his cross-examination. [*Vide pp.* 310, 312.]

Lord *Ellenborough*.—How does this apply to the question at issue?

Mr. *Dallas*.—It only goes to general character: I am not anxious to press it.

The examination and cross-examination (August 12 1805) of Abraham Pinto were read at length [*Vide antè*, pp. 320, 321.]

The four first questions and answers on the examination of Francisco Febles were read. [*Vide antè*, pp. 321, 322.]

The whole of the evidence of Pedro Ruiz was read. [*Vide antè*, pp. 283, 285.]

The evidence of Maria Calderon was read [*Vide antè*, pp. 243—248, 312, 313.]

Lord *Ellenborough*. The question as to her age is quite out of the case. Upon the face of all the evidence, it appears clearly and decisively that she was born in 1786, consequently in 1800 she was fourteen years of age, and in 1801 must have been above the age of puberty. The evidence puts that point out of the case. The mother herself produces the register.

Mr. *Nolan*.—The first declaration was, that she was but 14 years of age

Lord *Ellenborough*.—We have the evidence of a man who remembers her playing with his son, and we have evidence as to her appearance, and her exhibiting signs of puberty, which removes all doubt upon the point. I only mention this to save trouble to the gentlemen on both sides.

Mr. *Garrow*.—I shall not insist that she was under fourteen years of age.

Questions three to twelve inclusive, and the answers thereto, on the examination of Juan Bermudes (*antè*, pp. 276, 277) were read.

Lord *Ellenborough*.—He was then acting not as defensor but as interpreter.

Mr. *De Gourville** sworn.—Examined by Mr. *Stephen*, assisted by an interpreter.

How long have you resided in the island of Trinidad?—I resided there for fifteen years before the conquest.

Did you reside there at the time of the conquest?—Yes.

In what profession?—I was commandant in a district called St. Ann and St. Joseph.

What were the courts or judges of criminal jurisdiction in Trinidad at the time of the conquest?—The governor and the two alcaldes.

Did they administer criminal justice jointly or separately?—Separately; the three tribunals were equal in power and administered justice separately.

Was there any jurisdiction within the island superior to theirs?—No.

Was there any court of appeal out of the island?—Yes, the royal audience of Caraccas.

Had they jurisdiction in cases of robbery or theft?—The process was always instituted in the island, but in case of afflictive punishment, there was an appeal to the audience of Caraccas.

What do you mean by afflictive punishment?—Death or whipping by the hand of the hangman.

In those cases how did the process terminate?—Par escrivano publicques [the answer was not given by the interpreter.]

You have stated that they commenced in the island; where and how did they end?—An appeal was made to the Caraccas.

Mr. *Stephen*.—That is, if there was what you call an afflictive sentence.

Lord *Ellenborough*.—He was asked a question before, to which I have got no answer on my notes; he was asked how the process that commenced in the island ended? I have no answer to that question. In those cases of death or afflictive punishment, the proceedings with respect to which commenced on the island, by what authority and where did they end?—The judgment was confirmed.

If the judgment was confirmed by the audience of Caraccas, what was the consequence?—If it was confirmed by the audience of Caraccas, it was executed in the island. There have been instances in which, without the confirmation of the audience of Caraccas, it has been executed by the power of the general, and the confirmation has come four months afterwards.

Was there any appeal after the judgment given by the audience of Caraccas?—No.

Mr. *De Gourville*, cross-examined by Mr. *Garrow*.

Did you ever know an instance of a judgment executed pending an appeal to the audience of Caraccas?—There has been an instance, where the general caused the sen-

* See his evidence on the former trial *antè*, p. 501.

tence to be executed immediately; but presently after, the application was made to the audience of Caraccas, and the answer was not received till four months afterwards.

Repeat your last answer.—Yes; there has been an instance where the general caused the sentence to be executed immediately. Don Joseph Chacon caused the execution of a man before he had received the confirmation from the audience of Caraccas.

Was that the sentence of a military tribunal, or an ordinary one?—A criminal judgment, but not by a military tribunal.

What was the occasion of governor Chacon doing something so irregular?—It was for an assassination of their master, by four negroes, and to strike terror.

Did this gentleman ever know an instance of any person having been put upon the Piquet during general Chacon's government, before the cession of the island to Great Britain?—The case never presented itself.

Was there any instrument of any kind for the infliction of torture, till the cession of the island to Great Britain?—I never saw any, and I doubt whether it existed.

REPLY.

Mr. Garrow.—It now becomes my duty—under circumstances which render me more unequal to the task than I have ever been on any former occasion—to make some observations upon the case, as it has been submitted to you by both parties, and which has now (in respect of the evidence at least) arrived at its termination. As to the facts upon which this case stands, there is now no dispute. It is admitted that the female who has been produced before you as a witness, has been subjected to such a degree of cruel and miserable personal suffering as is, as far as our knowledge and experience teach us, without any example. In order, in some measure, to abate those sensations, which every Englishman must feel at the recital of such a story, my learned friend went into a statement (which I am sure must have been very painful to him) with respect to the manner in which torture was formerly inflicted by the law of this country, for contumacy, in standing mute and not pleading to an indictment. I admit, that, as the law formerly stood, such a mode of torture as my learned friend has spoken of was resorted to, if a person contumaciously refused to plead to an indictment; for as the law then stood, until he pleaded, there could be no inquiry into the circumstances of his guilt, and it is consequently evident, that unless there had been some mode of punishing his obstinate silence in refusing to plead, every contumacious person would have had it in his power to prevent any judicial investigation of the nature and circumstances of his offence. I do not think myself called upon to apologise for this ever having been the law of England; on the contrary, I am rather furnished with a proof of

the folly, the absurdity, and the wickedness of such a law, by its having been erased from our Statute book, by the wisdom and humanity of a more enlightened age. I wish the recollection of this circumstance had produced its proper effect upon the mind of general Picton, and had induced him to pause before he introduced this unheard-of process into the island of Trinidad; for it is now clear, upon the evidence, that during the whole period of the Spanish government in that island, (until the arrival of general Picton, whose instructions were, to make the people feel the full benefit of the mild administration of British laws), not only had no person ever been put to the torture, not only had no person ever been deemed a fit subject for such a mode of punishment, but there was not in the island any instrument adapted to the purposes of such a punishment, if any man who may have been governor, forgetting his duty, had ever been minded to inflict it.

It is unquestionably in proof before you, that until general Picton erected his piquet, no instrument of torture was known or heard of in the island of Trinidad. According to the evidence, Luisa Calderon was the first person on whom torture was inflicted. That fact is incontestably proved; but you are told that, although it be proved, general Picton stands clothed with a perfect defence for what he has done. If the ability and eloquence of his advocate can give him a defence, undoubtedly he has it; but I shall show you, by the evidence produced on his part, that there is not the least pretence for his exculpation; I shall show you that upon the grounds and reasons which my learned friend has adduced on behalf of general Picton, there is not a shadow of pretence for your coming to any other conclusion than that he is guilty of the crime imputed to him.

In this case my learned friend has been under no disadvantage, although he has complained as if he laboured under some inconvenience, from the course I have thought it my duty to adopt. It has been said, that I did not enter into a consideration of what the law of Spain was; and it has been a subject of complaint, that admitting there were cases to which the infliction of torture might be applicable, I had not adverted to them in the course of my argument. With all due deference to my learned friend, he will allow me to say, that I did not think myself called upon to advert to the supposed existence of such a case: I contend that, even supposing a Spanish governor might, previously to the cession of the island, have been protected in the infliction of torture by the Spanish law, still that general Picton, a British governor, acting under a British commission, with British instructions, could have had no such excuse. I thought that I should have been wasting time, if, in any observations addressed to you, I had anticipated that the defence of general Picton was to have been founded

upon the old Spanish law. If such a defence was to be relied on, I thought it ought to come from my learned friend, before I applied my observations to it. Even though my learned friend could produce thousands of *dicta* out of old Spanish law books, showing that by the old Spanish law torture might be inflicted, still he makes no progress towards a defence of general Picton, unless he shows that the person claiming protection and indemnity under the old Spanish law, has strictly conformed and adhered to that law. He must show that, under the circumstances in which general Picton has inflicted torture upon Luisa Cakleron, he has justifiably inflicted it. My learned friend was at no loss to know the grounds and arguments upon which this prosecution rested; for although I did not think it necessary to go into them myself, he had heard them stated upon a former occasion by my learned friend Mr. Nolan, in one of the ablest arguments ever delivered in this court.

I say, therefore, that Mr. Dallas was under no difficulty as to the nature of the arguments upon which we relied, though I avoided referring to them; and it is impossible not to see, that, however eloquently and powerfully he may have stated the case on the part of general Picton, yet when the evidence put in by himself comes to be considered, the whole of his defence must fall from under him. For the sake of the argument, I will suppose that general Picton had been a Spanish governor, and then I will contrast his conduct with that which ought to be the conduct of a British governor.

It has been stated that, by the laws of Spain, torture may be inflicted upon persons suspected of murder, robbery, rape, and certain other crimes, and also upon witnesses who prevaricate or give false testimony, in order to extract the truth from them. But admitting that this may lawfully be done, it must nevertheless be accompanied by ceremonials well calculated (as general Picton has himself said of the Spanish law) for the protection of the subject. There is, I admit, a great contrariety between the testimony of this girl, who appears as prosecutrix, and the evidence returned under the mandamus. I do not now insist that she was under fourteen years of age; but I do insist that general Picton, by his alcalde Begorrat, has turned his back upon all the salutary regulations of the Spanish law, and has retained nothing but the bitter portion of it—the infliction of torture. By the Spanish law, before any order could have been issued for the infliction of torture, there must have been a notification to the party, and a pause must have been allowed between the notice and its execution. What was the intention and object of such a regulation? Common humanity and justice required it. I will not enter upon the question, whether there ever did exist a state of society in which torture was excusable; I will,

however, suppose that there may have been a state of things in which to resort to the punishment of torture may have been justifiable, and even wise. But admitting such to be the case, what says the law? The law says, you shall first give notice to the party who is to be tortured:—why give notice? For this plain reason, that, as your object is to extract the truth, you may attain it without proceeding to the extremity of inflicting torture, by the mere terror of such a punishment. And observe, gentlemen, the anxious nicety with which, by the laws of Spain, the days of notification are measured. Days do I say? No, rather mark the curious exactness with which even the moments are measured in order to enable the parties to consult their personal security, and determine whether, from the terror of the impending punishment, they will avoid it, by making the required confession. Mark, I say, how all this proceeding is with such singular curiosity and caution restricted, so that the party shall not have more time allowed to him than by law he is entitled to. You observe, the day upon which the notice is given shall be counted as one of the five days allowed by law, even though there should be intervening holidays, I fancy, gentlemen, I bring back to your remembrance the very words of one of these orders.* If the judge orders torture, it must be notified by the notary, and five days must elapse from that time before it can be inflicted, in order that the parties may determine whether they will come in and confess, or whether their nerves are strong enough to undergo the torment. Thus, how the torture (supposing the law for it to have been in force in Trinidad) *ought to have been* inflicted, we know; how it *was* inflicted, we are informed by the evidence; you have heard what was stated by the alcalde Begorrat, when he showed the instruments of torture to this poor girl for the first time. In an early period of our history, an instrument of torture having been introduced into this country, it was called, by way of derision, the Maiden Torture—the Duke of Exeter's Daughter—So I presume that this new instrument of torture introduced by general Picton, will henceforth be denominated the maiden torture of the island of Trinidad, general Picton's daughter. When Begorrat brought the unhappy girl into the room where this instrument of torture was fixed, looking at it, he said, "Now, madam, if you do not confess, you will be tortured, and if your limbs are destroyed and you die, it is no affair of mine." Why, gentlemen, surely in any code of laws as well as in this of Spain, there would have been found an opportunity for pausing—some reasonable time allowed for a person to choose whether he would suffer such a punishment—or to see whether even after the

* *Vide ante*, p. 844, the extract from Colom's Instructions, vol. 1, book 1, p. 49.

expiration of the last moments of the five days, the party would not be deterred by fright and the terror of the punishment, and so be induced to make a confession. But, what is the case here, when, for the first time, the Island of Trinidad is cursed with the infliction of torture by general Picton? A robbery is committed; the party suspected of being concerned in it is accused, and taken before the governor. He does not do what, if he had thought proper, he might have done;—for on the evidence of M. de Gourville, it is clear that he was one of three authorities for the administration of justice, the others being the two *alcaldes*; that these three authorities were independent of each other, that there was no appeal from one to the other, and that if the torture is ordered it must be by the judge to whom the complaint of the injury is made;—general Picton does not, as he might, take cognizance of the cause himself; but, when the young woman is brought before him, he sends her to the *alcalde Begorrat*, in order that he may institute the proceedings against her; and then Begorrat, having exhausted all his powers, makes a representation to the governor, that he has reason to suspect that this young woman was an accomplice in the robbery, and that if she were put to the torture, she would make a confession. Upon this, general Picton writes that which I have called, and will call again, *the bloody order*—“Inflict the torture on Luisa Calderon”; and then, so impatient is his agent, Begorrat, to try the effect of this new instrument of torture, that instead of waiting five days, as the law directs him, he cannot wait five hours, but he and the officers under him, immediately have recourse to the first application of the torture, upon the person of this wretched young female; and she, under the effects of it, makes the confession.

Gentlemen, by the laws of Spain, the torture cannot be inflicted above one hour; but, it seems, at least according to the practice of Begorrat, that you may repeat it as often as you please; only taking care to leave an interval of twelve hours between the periods of infliction. After this first experiment had been tried upon the unfortunate victim, before twelve hours had elapsed from the occurrence of this bloody scene, these engines of cruelty again made their appearance: they again find her in her room, and she is a second time put upon the instrument of torture.

But, gentlemen, there is another point of view in which this case is to be considered. By the laws of Spain, before any person can be put upon the torture, he must have a guardian appointed to take care of his interests. That law of course does not apply to persons under the age of fourteen years; for under that age torture cannot by the law be inflicted at all. It stands, then, as a law applicable to persons between the ages of fourteen and

twenty-five years; and, although for certain purposes a woman may be deemed to have arrived at the age of puberty at a much earlier period, yet, with reference to the time during which a guardian or defensor is necessary by the Spanish law before the torture can be inflicted, she is not of age until she has attained twenty-five years. Then let me ask what was the next step which ought, in point of form, to have been adopted? It was that a defensor should have been appointed for this young woman.

There is a most curious inference drawn from the facts of this case: it is, that because this girl lived with a man who, I say, had debauched her at the age of ten years, she must therefore have been a woman of mature age, and there are circumstances referred to in the evidence upon that subject, which it would be disgusting to repeat; but, whatever her age may have been, I say, as I am authorized to say by the evidence, that it was, by the laws of Spain, necessary that her age and description should stand at the head of the process of accusation against her. I admit that towards the conclusion of her evidence in her last examination, she is stated to be fifteen years of age; be it so; she shall be 18 or 19 years of age if you please; but, says my learned friend Mr. Dallas, it is true she had no defensor appointed, but this was because she had applied to several persons, and they had refused to undertake her defence. It was a cruel haste not to allow her some short period, in order to afford her an opportunity of endeavouring to obtain one; but, where is the evidence that she had applied for a defensor, and had been refused assistance? What were her means of making the application? She was an unhappy creature, committed to gaol with no friend to help her. I do not find the least fault with her having been committed to gaol; there was suspicion enough to authorize her being committed, but what I ask is, what time was given to apply to any person whatever to become her defensor, and to take care of her interests? You find that at some period of the day, on December 23, the application is made to general Picton; he signs the order for the infliction of torture; and the execution of the order takes place on the same day on which he issued it.

But, there is another answer to the argument of my learned friend; first, I say, she did not apply for a defensor, nor did any person refuse her his assistance; but, you have it proved to you, that by the law of Spain a defensor *is to be officially appointed, in case the party has neglected to appoint one*. What! could they not wait till the rising sun of the 25th? Were they afraid that the holiday of the 25th would prevent this new experiment with their new instrument of torture, which had been moved by the order of general Picton, from the barrack-yard? Were they afraid that Christmas-day would

interfere with the application of the intended means of compelling this poor girl to make a confession? Was there any occasion for such indecent haste as this? Was it necessary that in the short space of twelve hours, torture should be twice applied? But it does not rest here, they claim a merit on the subject; for Begorrat says, that as Luisa Calderon did not appear to be 25 years of age, he therefore RESERVES TO HIMSELF the right of appointing a defensor. Does he so? I should like to know in what stage of the proceedings it would have been useful for her to have had a defensor? Certainly, before the torture was inflicted. It is asked, whether if a defensor is given to a party, he can prevent the infliction of torture: to which it is answered, that the defensor can suspend it; he can tell the party that he has a right to appeal; he can tell the judge not to execute his sentence while it is a matter for the consideration of a superior court.

But, gentlemen, mark the mockery of thus reserving the right to appoint a defensor for Luisa Calderon, when it is announced to her that she is to be put upon the piquet *instantly*. At the end of eight weeks after her limbs have been torn by the torture, when she is desired to name a defensor, she finds no difficulty in procuring one; and it is but justice due to her defensor, Don Juan Bermudes, to say that in him she found a most able and powerful advocate. If it had not been for the very fatiguing inquiry the Court has already gone into, I should have had the whole of his defence* read; probably he may never hear of my name, or of what I express respecting him; but I think it is due to him thus publicly to say, that his defence of Luisa Calderon was ably, powerfully, and energetically urged; and I have no doubt, that if this gentleman had been appointed her defensor in the first instance, and when she ought by the law of Spain to have had one, her limbs would never have been torn and tortured as they have been; she would have had an appeal, not to a judge with an appellate jurisdiction in himself but to the king in council. In point of fact it was not until the month of March that she had a defensor appointed.

But, gentlemen, in order to show that the right to inflict torture does not stand on the authority of the Spanish law-books only, they have told us that there has been one instance in which torture was ordered to be inflicted. I know that if any of my learned friends near me had been at Trinidad, when the answers to this mandamus were returned, you would never have heard of this circumstance, for it makes against the very thing for which they are contending. When a court of justice is instituted in the island of Trinidad, in pursuance of a mandamus, it should seem that all the discretion of those

who are to direct its proceedings, forsakes them. The case of Francisco the negro is that of a man who is not of the age of 14, but of 19 years: the judge, not resorting to the audience of Caraccas, pronounces a sentence for applying the torture; and he states, that the man being of the age of 19, which is under 25, it is the duty of the judge to appoint an advocate, a patron, or guardian to take care of his personal interest. He is called upon to name these; and the judge records, that if he fails to do so, it is the duty of the judge to do it officially. Why is this required? In order that the guardian, if he sees a judge inclined to step into the prison of the person accused, late in the evening, in order to inflict torture, may say to him—stay your hand till to-morrow. There was no such indecent haste in the time of Mr. Chacon. As soon as the sentence is passed for the infliction of torture on Francisco, there the record stops. It does not appear that the reference to the audience of Caraccas, was in consequence of a request on the part of the person accused; but it should seem that the man who pronounced the sentence felt it his duty to refer the order for the torture to the audience of Caraccas. M. De Gourville has given us strong reason to suppose that was the case, for he says that the tribunal of appeal had authority to inflict death; but he expressly says that wherever the punishment was death, or what he calls an afflictive punishment, in that case the judge had no authority to carry it into execution, without applying to the royal audience of Caraccas.

He states that there was one instance, in which that which was the legal mode of administering justice was dispensed with, but the instance which forms the exception proves the rule. It was a thing which a British governor could not have done but a Spanish governor would; and indeed, I do not know but that even in a British settlement, in certain cases it might be done. The case adverted to by M. De Gourville was one in which there was a necessity for following up the sentence of the judge by immediate execution. It was a case of four negroes having assassinated their master; and the governor forthwith executed them, in order, by the example of their punishment, to strike terror into others; confident that he should receive that confirmation of the sentence from the tribunal of appeal, which afterwards did arrive. Does not this demonstrate that in the present case every previous step required in conformity to the Spanish law was wholly disregarded as much as if the law had never existed? in short, the only thing respecting which there appears to have been any anxiety, was to do something inconsistent with the Spanish law. I am not alleging that this was a proceeding which emanated from general Picton himself; this proceeding was founded upon the suggestion of Begorrat, to which, in an unhappy moment, general Picton

* See it *ante*, p. 372.

listened; but he is not on that account the less responsible.

It seems to me that the only thing they have taken from the Spanish law is this—they have concluded that because torture might, under *some* circumstances, be inflicted by the law of old Spain, therefore in the island of Trinidad torture might be inflicted under *any* circumstances whatever.

Now, gentlemen, I will suppose that all I have said is totally unfounded; and that, instead of the law having been entirely disregarded, it has been strictly followed. I will suppose that a defensor had been appointed who had been duly sworn faithfully to discharge his duty; I will suppose that the judge was present at the time when the defensor was sworn, and that the defensor had an opportunity of opposing the execution of the sentence and of suggesting the necessity of delay;—still I contend that they cannot justify what they have done. My learned friend says that general Picton was not present at the time when the torture was inflicted; and that if the limbs of this unfortunate girl had been torn from their sockets, it was to be attributed to the gaoler, and not to general Picton. This is what I complain of; because the humanity of the Spanish law has provided that the judge who orders the infliction of the sentence, shall be present. Who orders it in this case? Is it Begorrat? No; he does not issue the sentence of torture, but he applies to his superior to order it; he goes to general Picton, and says to him, "I am not at liberty to do this of my own authority; I have not notified to the accused that she is to undergo the torture, and consequently there is no appeal; I come to you in order that the sentence of torture may originate with you." He states, that in his opinion there are sufficient grounds for the infliction of torture; and then, general Picton, upon his representation, without any further inquiry, writes an unqualified order to inflict that punishment. General Picton himself writes the order; and if he was justified in writing it, then, by the old Spanish law, he should have been present when it was executed. But I contend that he had no power to write the order. He had no authority to interfere in a matter which he had already delegated to Begorrat; the proceeding ought to have remained in the hands of Begorrat the alcalde, without the interference of any other person.

We will suppose, that by the Spanish law torture might have been inflicted; and that, instead of the inhabitants never having seen any thing of the kind, the whole island of Trinidad had been covered with instruments of torture; still, I say that general Picton had no authority to enforce that mode of punishment. That he derived none from his appointment is in my judgment clear. I shall not go into that question now; but I shall reserve to myself the right of contending hereafter, that the

moment a British governor hoists his flag in a ceded country, from that very moment, if torture had been the order of the day for five hundred years, there would be an end of it. I shall not go into the argument at present; I state it as an undeniable proposition, founded upon the authorities which have been laid before the Court. I could, indeed, enter upon the question this moment, if it were necessary, without the exertion of any industry; because I could state, from the able argument of my learned friend Mr. Nolan, all the authorities upon the subject, without the least personal fatigue.

It is said that general Picton, by the cession of the island to his majesty's arms stood, with respect to the appellate jurisdiction, in the situation of the royal audience of Caraccas. I deny it entirely; I say that the situation in which general Picton stood, is only to be collected from his majesty's commission and instructions; and I ask you to detect me if I am stating what is not to be found in these papers. It appears that general sir Ralph Abercrombie appointed general Picton (no doubt thinking well of him as a military man, and I dare say as he well deserved) to the high and distinguished situation of governor of the island of Trinidad. He tells him, that the great object is, to conciliate the people, by the mildness of the British government. I think, gentlemen, it was a bad way of making the people feel the blessing of having been transferred from the arbitrary government of Spain to the benign government of Great Britain, by introducing the punishment of torture, which, though they might have heard of it as existing in old Spain, had never visited them in the Island of Trinidad. He is told that the ancient laws are to be continued as nearly as circumstances will permit; but that there is reserved to him the right of dismissing any officers who should, by their conduct, give him offence. I should think that the first man who ought to have been dismissed, would have been the man who had the wickedness to propose to him the infliction of torture. The moment this fellow Begorrat found his way to a British governor with a proposition to tear the limbs of a British subject, he should have been driven from his presence with contempt, disgust and ignominy. But we find him, on the contrary, meeting with a ready reception from general Picton; we find him departing as if the governor had said to him "Well done, thou good and faithful servant; go on, proceed as you have begun." We find him at four o'clock the same afternoon, and at eleven o'clock the next morning at the prison where this poor creature was confined, to see how his bitter pill worked. One is disgusted at the account of this horrid transaction which the fellow gives in his evidence. He was asked,* whether he deemed Luisa Calderon's

* *Vide antè*, p. 290.

fainting to proceed from excess of suffering, or from affectation; and he answered, that after he had given her a glass of wine, she recovered immediately; and therefore he thought it proceeded from affectation. I know I shall be blamed by some for using the language which naturally occurs to my mind upon this occasion. I shall be told that I wished to inflame your passions: I say that to ask of a witness, whether a person of the delicate and tender frame of this young woman, extended, as she has stated to you, with the extremity of her bare foot (pressed by the whole weight of her body) just resting, or endeavouring to rest, on the sharp pointed piquet,—to ask, I say, of a witness whether the sufferings of a person so tortured were affected, was a mockery which, if attempted in any place where I had the least authority, should not have gone without its due share of animadversion. What is the answer to a similar question, given by a witness who was present with Begorrat, and had seen this British subject so tortured? The account he gave was such as might have been expected; he says, she wept, and invoked the Holy Virgin to her aid.* But what says Begorrat? He says, *As I gave her a glass of wine and water, and she recovered, I think her fainting proceeded from affectation; and as she was afterwards able to walk to the place where the robbery was committed, I do not think she could have suffered much from the torture.*† Gentlemen, you have had an opportunity of seeing what is the state of her limbs, even at this distance of time; and you will be able to judge from their appearance, whether Begorrat was a fit man to be entrusted with the office he has exercised.

But it is said, that general Picton was the legally constituted authority for this purpose. What do the instructions of his majesty say to him? I am sure there is nothing in them from which he can pretend to derive any authority to inflict torture upon one of his majesty's subjects. We have had in evidence the letter of his majesty's secretary of state, lord Hobart, speaking handsomely,—and I dare say deservedly so,—of the character of general Picton;—I arraign his conduct only with respect to this transaction; and I am persuaded nothing is to be found in lord Hobart's letter upon which he can rest a justification of it. The law which general Picton has exercised must then be considered merely as general Picton's law; it can rest upon no authority delegated to him by his sovereign, for I am prepared to contend, that the king of this country could not have delegated such an authority to him. There are some things, which his majesty can neither do himself, nor empower a subject to do. He could not authorize any man for the first time to inflict torture upon the people of the Island of Tri-

nidad. When I say that he *could not*, I must be, understood to mean that he *would not, even if he had the power*. They who know what the whole tenor of his reign has been, the benignity of his disposition and inclinations, and the mild sway with which he has uniformly governed his subjects, cannot suppose the possibility of such a delegation. But need I say he has not given it to general Picton? His majesty says that he constitutes him governor of the Island of Trinidad, and gives him provisionally all the authorities that had been vested in the Spanish governor:—a power to authorize a judge of the first or second election, to inflict torture?—No; he could do no such thing. The judge in the first instance made the order, but he could not execute it, he could not enforce the infliction of torture under such order; he was to remit the whole of the proceedings to a distant settlement, in order to afford time for deliberation between the issuing of the order itself, and the authority to execute it. The authority of the governor was wholly passed over, and the audience of the Caraccas was the only tribunal to which the order of the judge was referred before it could be put in force. The magistrate who made the order for the infliction of torture, dared not execute it until he had received the confirmation of the royal audience of the Caraccas. Was governor Chacon appealed to, even in the case of the four negroes, who assassinated their master? No; the governor upon that occasion took upon himself all the responsibility, at the risk of his head. He did not write an order in the book of a notary or inferior judge, for the infliction of torture; but he wrote an order for the immediate execution of the assassins, whose guilt was manifest, expecting, as was afterwards the case, that he should find his indemnity in the confirmation by the audience of the Caraccas.

His majesty, by his instructions, limits the authority of general Picton to the authority which had before been exercised by the Spanish governor. Then I ask you, where you find any authority in the Spanish governor, to make an order for the infliction of torture? But, lest that should not be enough, his majesty in his instructions marks the powers of general Picton by new bounds. His majesty had said we have given you a plenitude of power; we have invested you with all the powers that belonged to the Spanish governor; but all the powers from which the Spanish governor was excluded, and which properly belong to the supreme government, we reserve to ourself. Yet my learned friend Mr. Dallas says, that the moment the cession of the island to the arms of his majesty took place, the authority of the royal audience of Caraccas was transferred to general Picton! His majesty has said, all the powers that the Spanish governor Chacon exercised we give to you, but all the paramount powers which the Spanish mo-

* *Vide antè p. 237.*

† *Vide antè p. 290.*

narchy reserved to itself, we reserve in like manner to ourself. I hardly need repeat, that had the forms of the Spanish law been observed, had there been an order, as there ought to have been, for the appointment of a defensor for the unfortunate girl who appears as the prosecutrix, had Don Juan Bermudes been nominated her guardian in the first instance, that able advocate would not have suffered the torture to have been inflicted upon her. He would have said, "I will not go to the governor: I will look at the commission given him by his majesty, and see whether general Picton is by its authority invested with the appellate jurisdiction: I maintain that all the appellate authority which was reposed in the royal audience of Caraccas now resides in the breast of his majesty the king of Great Britain; I tell you, therefore, that I interpose my appeal to the king of Great Britain in favour of this unhappy young woman, and touch a hair of her head if you dare, before you have received a confirmation of your sentence from the king of Great Britain." Such would have been the language of her defensor if one had been appointed for her. When we talk of the devolution of an authority, I would ask you how it can possibly be in favour of a person whose authority was never before heard of. My learned friend says, that the authority of the audience of Caraccas devolved upon general Picton by the mere fact of the annihilation of the Spanish government. He says, that from the moment of taking down the Spanish flag, nothing could restore the authority of the audience of the Caraccas but a re-cession of the island to Spain. I say, that from that moment every power was vested in his majesty, and that none was imparted by him to general Picton but what was *expressly* granted. Has he granted to him the appellate jurisdiction? He has not said so: he has said, "We invest you with all the powers enjoyed by the Spanish governor; and as there may be some inconvenience with regard to the execution of the interlocutory sentences of inferior judges, we invest you with all the authority which is necessary to confirm them." His majesty could not have said, "We invest you with the authority of the supreme tribunal of appeal," for that would have been to have confounded things. It would have had the effect of making him judge in the first instance, and giving him an appellate authority upon his own judgment. It would have made the judge and the person who was to decide upon the decision of the judge one and the same individual. General Picton, we will suppose, pronounces an order or sentence. An appeal is interposed. Who is to decide it? Why, according to Mr. Dallas, the same general Picton who issued the order. Was ever any thing so preposterous? He is to be a judge against whose decisions persons are to have the benefit of appeal, which appeal is to be carried from his room

on the right-hand side of the government house to his room on the left.

Under such circumstances, a person would be very likely to say to general Picton, "Sir, a gentleman, who looked very much like yourself, has done me the injustice to sentence me to the torture: I have appealed from his order: surely it is not you who are to decide upon the justice of that appeal." Why, gentlemen, it is absolutely impossible that the appellate jurisdiction could have resided in general Picton: and he could not have it in any other way than by devolution, for the terms of his majesty's grant did not give it him.

I shall not detain you with many more observations: I do not mean to run into a lengthened argument upon any of the points submitted to you, but I request his lordship to give you his opinion on what I am about to state. I will suppose that all I have said is unfounded. I will suppose that general Picton, if he had been a Spanish governor, might have had this ridiculous appellate jurisdiction: but I say that the moment this island was surrendered to the British arms, the people were entitled to the full benefit of British laws, and nothing could afterwards authorize the infliction of torture. And when it is said that his majesty conceded to the people of the island that they should be under the administration of their own laws, it must be understood that such concession was for the purpose of securing to them what was for their benefit and advantage, and not for the purpose of introducing cruelty and torture. General Picton cannot be allowed to say that he had a right to enforce the law of torture upon the Spanish settlers, but that he did not mean to apply it to a British subject. He cannot say this, for if it was the law of the place that torture should be inflicted, there could be no distinction between one part of his majesty's subjects and the other; the admiral of the fleet, or his majesty's commissioners, were equally liable to it for any supposed offence of which a judge might think proper to say there was a strong case of suspicion against them. Such a suspicion in the mind of the judge as that the admiral meant to run away with the ship to an enemy's port, would have justified the infliction of torture upon him; for the law, if it exists at all, must be universal.

Until I hear the learned judges of the land say otherwise, it will remain a rooted opinion of mine, that if his majesty had been advised to say to general Picton, "we appoint you governor, and we give you an appellate jurisdiction which shall authorize you to confirm a sentence of torture;" his majesty would have been made to say, that "we give you that which we do not possess ourself; it is a punishment which no person or power in this country can inflict." I maintain, that his majesty could not say to general Picton, "we have conceded to the inhabitants of Trinidad

that they shall be governed by their own laws; and notwithstanding a British subject cannot be tortured, yet, for the greater vigour of your government, we authorize you to inflict the punishment of torture where you think it necessary." Until I hear it laid down by his lordship, that his majesty can grant such a power, I shall deny it. It is not necessary for me to deny it, for if you are of opinion that there was no law applicable to Trinidad that could justify the infliction of torture at all, or if you should be of opinion that there was such a law as, with the observance of certain formalities, would justify a Spanish governor in inflicting torture, unless those formalities have to the strict letter been observed, unless those necessary guards for the security of the subject have been strictly adhered to, in either case I am entitled to a verdict against general Picton.

If you should be of opinion that there was a law in the island which (if duly administered) would have justified him in the infliction of the punishment of torture, then, if you are obliged to return a special verdict, it will be this:—"We are of opinion that by the law of old Spain torture, under certain circumstances, might have been inflicted; but we are also of opinion, that in this case those guards and securities for the protection of the subject which the law had provided have been so abandoned and disregarded as to make the application of that mode of punishment illegal: that so considering the case, we are of opinion that general Picton, though there was a law authorizing torture, has no justification under it, because he has not adhered to the forms which that law has laid down and required to be observed."—If you could by possibility come to any other conclusion, I should desire you, for your own honour, for the honour of the British name, and that foreign nations may know, in the present state of the world, what they have to expect, to say by your verdict—"Though we are of opinion in this case, that a Spanish governor might, before the cession of the island, have inflicted the punishment of torture, yet we are not prepared to say that a British governor could have done so after the cession; on that point we desire the opinion of the judges of the land."

Upon the whole, gentlemen, I contend that general Picton has not made out a case under the Spanish law, even if he had been the governor of a settlement strictly Spanish; you, I am persuaded, will say that what has been offered to you in his behalf is no defence—that he had abandoned his duty as a British governor, and that he is guilty of the crime of which he is accused.

SUMMING-UP.

Lord *Ellenborough*.—Gentlemen of the Jury; This is an indictment preferred against general Picton, late governor of the island of Trinidad; he stands charged with having in-

flicted torture upon a young woman, of the name of Luisa Calderon, resident on that island; and the question for your consideration is, whether this act (which is admitted to have been done by his authority) was legally or illegally done.

It does not appear that general Picton had any further concern in the transaction, than merely giving the order "*appliquez la question*." Upon the recommendation which was given to him, through the *escrivano*, by the tribunal competent to try the offence and to examine witnesses, he thought fit to order the infliction of the torture; whether, under all the circumstances of the case, he was authorized by law so to do, is the question for your consideration.

To empower the governor legally to direct the application of such a punishment, it was necessary that such should have been the existing legal mode of punishment in the island at the time of the conquest; and it was likewise necessary, that in some character or other which he then bore, he should have been entitled to issue the order for its infliction. If the defendant's case should fail in either of these respects;—if torture was not the existing law of the island, at the time when it was acted upon, or if he had not, by virtue of any authority with which he as governor was invested, a right to order the application of it,—in either of these cases, whether his motives were good or bad, having acted illegally, a verdict of guilty must be pronounced against him.

But, gentlemen, there are certain circumstances in this case which I apprehend will induce you, under the recommendation of the Court, to find a special verdict. You have heard all the evidence, and I will not again detail it to you. The opinions of the different writers upon the Spanish law have been laid before you, and you have had the testimony of living witnesses, as returned under the two writs of *mandamus*. From these authorities, from books which are the repositories of the Spanish law, and from the testimony of persons resident in Trinidad, it is evident that the practice of torture was considered, at least up to the period of the cession, as part of the Spanish law, and that, in the absence of any prohibitory provision, it obtained in that island. The case, with reference to this point, presents itself with a very different aspect, from that which it assumed at a former period. The evidence to show that at the time of the cession torture (abhorrent and disgusting as it is to every British ear) was the law of the island, is now full and complete. I think that the evidence upon this subject is all to the same purport, and that it does authorize you to come to the conclusion, that up to the time of the cession of the island, the system of torture (*i. e.* the right of the judges to apply torture to persons suspected of certain crimes, or to accomplices, or to witnesses prevaricating or refusing to

tell the truth) existed in practice in Old Spain, and was received as law in Trinidad, although it certainly had not been acted upon there within the memory of man.

Now, this being admitted to have been the law at that period, the next question is, whether, when an island is ceded to the British arms, a species of punishment—a mode of investigating the truth so utterly inconsistent with the constitution and laws of great Britain, and with the habits of its people, is virtually abrogated; and whether his majesty, in continuing the former laws of the conquered country, must not be considered as doing so with an exception of the power to inflict torture.

Upon this point I will not intimate to you my opinion; but, I must state it to be a matter of great doubt: for certainly one of the most able and upright judges that ever presided in any court of judicature (I mean lord chief justice De Grey) did take occasion, in the case of *Fabrigas v. Mostyn* (which was an action of false imprisonment brought by a Minorquin against the governor of Minorca) to express himself decidedly against the possibility of the existence of torture in a British settlement. In that case he represents torture as a species of punishment, which it was not competent to the authority of the crown to continue in any conquered colony. His words are these: "I do believe Mr. Mostyn was led into this" (speaking of the circumstances of the case) under the old practice of the island of Minorca, by which it was usual to banish: I suppose the old Minorquins thought fit to advise him to this measure; but the governor knew that he could no more imprison him for a twelvemonth than he could inflict the torture." So that this learned judge seems to assume, that it was impossible for an English governor to inflict that species of punishment. He proceeds, "yet the torture, as well as banishment, was the old law of Minorca, which fell, of course, when it came into our possession. Every English governor knew he could not inflict the torture; the constitution of this country put an end to that idea."

Gentlemen, I state this authority as the reason why I desire you to find a special verdict;—that the soundness of this doctrine, which was laid down by as sound a lawyer as any who has adorned the bench in modern times, may be thoroughly examined. Because if the law be as this learned judge has laid it down, his majesty, by continuing the ancient laws, must be understood to have continued the laws with the exception of that which authorizes the infliction of torture.

Supposing, however, that this opinion of lord chief justice de Grey (to which I am disposed so far to pay deference as to recommend your finding a special verdict in consequence of it) is unfounded, and that the application of torture may be legally in-

forced yet the order directing its infliction must be issued by some person who has a legal right to inflict it. And it therefore becomes the governor, who claims that right, to show that he is invested with a judicial character, that he is the supreme judge in the island, possessing the appellate jurisdiction, and clothed with all the authorities which before the cession of the island appertained to the royal audience of Caraccas.

Upon this subject, I think the greatest doubt must be entertained. If I were to give my opinion, I should perhaps say that I think he had not such judicial powers. All the authority conveyed to persons in his situation is derived from his majesty, who, upon the cession of a foreign settlement, either adopts and continues the old laws, or promulgates new ones; but, insofar as he does not promulgate new laws, the old remain as before. I do not trouble you with the communications of general Abercrombie to general Picton, or with his letter to Mr. Nihell, because these are merely temporary orders; I refer you to the source of all the legitimate authority possessed by the governor—I mean the instructions given by his majesty. If by those instructions no power is given to the governor to represent the audience of Caraccas as court of appeal, as I am clearly of opinion that he does not take such power by devolution, that power remains in his majesty, to be executed by himself, or those whom he shall expressly appoint for the purpose. It therefore comes now to the question, what is the true construction of his majesty's instructions to general Picton? Did his majesty, by those instructions, invest him as governor with the powers theretofore possessed by the royal audience of Caraccas?

His majesty's words are "It is our will and pleasure, that, for the present, the temporary administration of the island should, as nearly as circumstances will permit, be exercised by you according to the terms of the capitulation hereunto annexed, in conformity to the ancient laws and institutions that subsisted within the same previous to the surrender of the said island to us, subject to such directions as you shall now or hereafter receive from us, under our signet or sign manual," &c. Then he says "It is nevertheless our special command, that all the powers of the executive government within the said island, *as well civil as military*, shall be vested solely in you our governor, or in the person having the government of the said island, for the time being," (i. e. *the civil and military*, but not *judicial* powers), "and that such powers as were heretofore exercised by any person or persons separately, or in conjunction with the governor of the said island, shall belong solely to you our governor, or to the person having the government of the said island for the time being;" now if the instructions had said, in general terms, that

all the powers that had been before exercised, should vest in the governor, that would have comprehended the powers exercised by the audience of the Caraccas: but I think this must be understood not to relate to the judicial power, which is mentioned afterwards; “and it is our will and pleasure, that all such public acts and judicial proceedings, which before the surrender of the said island to us, were in the name of his Catholic majesty, shall henceforth be done, issued, and performed in our name.”

Now, gentlemen, comes the seventh article, upon which a question may arise; “it is our will and pleasure, that for the present, and until our further pleasure shall be signified, the same courts of judicature which subsisted in the said island previous to the surrender thereof to us, shall, for the present, be continued in the exercise of all the judicial powers belonging to them in criminal and civil cases.” Thus all the courts of the island were continued in the exercise of their respective civil and criminal jurisdictions. In criminal cases, where there was an afflictive punishment as it has been called, there had been under the former government a right of appeal to the royal audience of Caraccas, but, upon the cession, that court ceased to have any jurisdiction in Trinidad, and the exercise of its powers by any other tribunal was not provided for by the terms of his majesty’s instructions, but those powers did not therefore devolve upon a person to whom they were not given, but remain with his majesty to be delegated by him to such person or persons as he should choose.

The instructions then say, “that they shall proceed according to the laws by which the said island was then governed; and that such judicial powers as previous to the surrender of the said island to us were exercised by the Spanish governor, shall be exercised by you, our governor, in like manner as the same were exercised previous to the surrender of the said island.” This gives him no more power than the Spanish governor possessed, and the Spanish governor never exercised this authority, but always referred himself to the audience of the Caraccas.

The two important points in this case are, first, the effect of the cession of the island to his majesty’s arms upon the pre-existing law for the infliction of torture (if you are of opinion that law did exist); the second is, the effect of this commission, and whether it did convey to general Picton those powers which had been theretofore exercised by the royal audience of Caraccas. These are questions of great moment; and if a special verdict is returned, it will be necessary that certain facts should be found for the purpose of raising these questions. It will be necessary for you first to say whether the law of torture prevailed up to the time of the cession. I have stated that, in my opinion, it did prevail; if you are of the same opinion, then of

course the gentlemen will state in the special verdict (not all that they have given in, but) as much as is material, and which it is not worth while to detain you with repeating.

There will be some other facts to be considered by you: an important one is, whether upon the evidence you find general Picton to have acted from any motive of personal malice? It appears that she was unknown to him; he did to be sure once say that, if she would not confess, he would make her pass under the hand of the hangman; but, however, after that, he transferred her to the ordinary judge, and then, upon the representation of that judge, he ordered the application of torture. If you think that he was not otherwise acting maliciously towards her than as the order may have been illegal, that is another fact to be found by you. As to the appointing a defensor, I should state that the appointment of a defensor was properly the duty of the alcalde, and was not a matter with which the audience of the Caraccas had any concern; and, therefore, although the omission to provide a defensor may have been blameable in Begorrat the alcalde, it does not attach to the personal character or conduct of general Picton.

As to the circumstance of the girl’s minority, that I think is out of the question; certainly, gentlemen, it would have been better if general Picton, when requested to exercise, for the first time, a power which at any rate is harsh and severe, had used more prudence and reflection before adopting so summary a measure. In the case of Francisco, the officer who then held the government refers to the audience of the Caraccas in these terms: “and he accordingly does condemn the aforesaid negro Francisco to be put to the torture, and which shall be put in force in the mode and manner as his royal highness may be pleased to determine, and to whom it is reserved to specify the nature and degree of severity of the said torture, and the order or stated times at which the same is to be inflicted.”* At the same time, in the construction of the laws applicable to this subject, it does appear, that the direction of this matter was rather with the ordinary judge, than with the audience of the Caraccas, because it is directed that the torture shall be inflicted in the presence of this ordinary judge, the escrivano and the gaoler; this last act, therefore, of appointing a defensor must remain for the alcalde, and not for the audience of the Caraccas. As this, however, was a new process, which had never before been applied in that island, it might have been better if general Picton, in inflicting so severe a punishment upon a person of delicate frame, had acted with greater caution.

But if he had been a judge of a superior court of record, general Picton would stand justified upon the authority of the same

* *Vide antè*, p. 722.

learned judge whom I have already mentioned, in the case of *Miller v. Seare* and others, and who there says, "in all cases where protection is given to the judge giving an erroneous judgment, he must be acting as judge." On that ground I cannot consider him justified, for he was not here acting as judge, nor was he clothed with judicial authority, for he did not legally represent the audience of the Caraccas, whose authority he assumed. "The protection in regard to the superior courts is absolute and universal. With respect to the inferior, it is only while they act within their jurisdiction." Now here, if he had no jurisdiction upon the subject, and was like any other stranger wrongfully assuming the functions of the royal audience of the Caraccas, he is not within the protection of the law. But if he had jurisdiction of the subject, as representing the audience of the Caraccas, then the irregularities that may have taken place would not affect him. Being, however, of opinion (at least it is the inclination of my opinion at present) that he was not clothed with the judicial authority of the audience of Caraccas. I think the act done by him is not justifiable.

If, as I have already said, you are of opinion that torture (*i. e.* the application of torture to witnesses, accomplices, and the principal offender) existed in Trinidad, under the law of Old Spain, up to the time of the cession of the island to his majesty's arms, the other question for your consideration is, whether he was actuated by any malice other than that which may be inferred from the illegality of the act, if it should ultimately turn out to have been illegal.

Gentlemen, if you find these facts, nothing will remain but matters of law arising from the application of those facts to this indictment.

Mr. *Garrow*.—Except, my lord, as to there having been no defensor.

Mr. *Dallas*.—His lordship has observed upon that already.

Lord *Ellenborough*.—It appears in the evidence that she had no defensor; there is no dispute about that; but in my view of the case it is not material. Because, if he had not jurisdiction, all that is done is illegal; not, however, that general Picton would be liable to punishment for all that is done wrong. If a person ignorantly and under an idea that he has the power and authority does an act, which it afterwards appears that he had no right to do, it would be hard to carry the punishment to the same extent as if the person had acted with a criminal intention; but that will be matter for the consideration of the Court; it does not arise here.

Gentlemen, you will have the goodness to state your opinion; and you will find, if you

please, that the law of torture existed in Trinidad up to the year 1797, the time of the cession of the island; and you will also say whether there was any other malice than that inferred from the illegality of the act.

The other facts may be stated in the special verdict by the counsel.

Mr. *Garrow*.—We wish to have it stated that, by the law of Spain, she was entitled to a defensor, and had none.

Lord *Ellenborough*.—Whether general Picton had or had not the authority theretofore possessed by the audience of the Caraccas, it could not be his duty to appoint the defensor. The appointment of a defensor would not affect his criminality or innocence. It is not material, for general Picton had nothing to do with it: it rested with the *alcalde*: it does not touch the question.

The *Jury* having retired for some time, returned with the following verdict:

"That, by the law of Spain, torture existed in the island of Trinidad at the time of the cession of that island to Great Britain; and that no malice existed in the mind of the defendant against Luisa Calderon independent of the illegality of the act."

Much time was occupied in arranging and preparing the Special Verdict: when finally settled, it was as follows:

Afterwards on the day and at the place within mentioned before the within named Edward lord Ellenborough chief justice of our lord the king assigned to hold pleas before the king himself Ewan Law esquire being associated to the said chief justice according to the form of the statute in such case made and provided come as well the within named James Templer who prosecuteth for our said lord the king in this behalf as the within named Thomas Picton by his clerk in court within mentioned And the jurors of the jury within mentioned being called some of them to wit John Haytor Samuel Page John Ufford William Clay Charles Gordon Marmaduke Langdale esquires come and are sworn upon the said jury And because the rest of the jurors of the said jury do not appear therefore other of the bye-standers named and approved for that purpose by the sheriff of the county of Middlesex at the request of sir Vicary Gibbs knight attorney general of our said lord the king by the command of the said chief justice are newly appointed whose names are added to the panel according to the form of the statute in such case made and provided which said jurors so newly appointed to wit Charles Bond James Cowing William Brain John Bristow James Stewart and John Northan being called likewise come and are also sworn upon the said jury whereupon public proclamation is made here in court for our said lord

* 2 Sir W. Blackstone, 1145.

the king as the custom is that if there be any one who can inform the aforesaid chief justice the king's sergeant at law the king's attorney-general or the jurors of the jury aforesaid concerning the matters within contained he should come forth and should be heard And hereupon William Garrow esquire one of the counsel of our said lord the king learned in the law offereth himself on behalf of our said lord the king to do this And hereupon the court here proceedeth to the taking of the inquest aforesaid as well by the jurors aforesaid first impanelled and sworn as by the other jurors now here appearing who together with the jurors aforesaid first impanelled and sworn being chosen tried and sworn to speak the truth touching and concerning the matters within contained say upon their oath that previous to the eighteenth day of February one thousand seven hundred and ninety-seven the island of Trinidad was a colony belonging to the crown of Spain and that on the said eighteenth day of February the said island was surrendered to his Britannic majesty and reduced under his dominions by virtue of certain articles of capitulation entered into between their excellencies sir Ralph Abercrombie knight of the Bath commander in chief of his Britannic majesty's land forces and Henry Harvey esquire commander in chief of his Britannic majesty's ships and vessels of war on the one part and Don Joseph Maria Chacon Spanish governor and commander in chief of the island of Trinidad on the other by which articles it was stipulated and agreed that all contracts and purchases between individuals which had been done according to the laws of Spain should be held binding and valid by the British government That the free coloured people who had been acknowledged as such by the laws of Spain should be protected in their liberties persons and property like other inhabitants And the jurors further find that no stipulation was made or agreed upon that the laws which had existed in the island previous to its surrender should continue or be in force other than is above provided And the jurors aforesaid further find that up to the time when the said island of Trinidad was so surrendered to his Britannic majesty the laws of the kingdom of Old Spain were in force in the said island And the jurors aforesaid further say that by the laws of the kingdom of Old Spain in force in the said island of Trinidad at the time of the surrender thereof to our lord the king torture might be inflicted upon any person against whom there was strong suspicion of having committed any robbery or theft or other atrocious crime or of having been an accomplice therein for the discovery of such crimes but that such torture could not be applied until the expiration of five days after the same had been ordered And that the torture was by the said laws to be applied in a retired room and that the judge together with the escrivanos and executioners

should be present at the infliction of such torture without any other persons whatsoever being present or able to hear it And the jurors aforesaid upon their oath aforesaid further say that there were three courts and no more in the island which had jurisdiction to hear and determine causes respecting the commission of robbery theft and all other crimes and misdemeanors and that the said courts were the courts of the governor of the island the court of the senior alcalde of the first election otherwise called the court of the common or ordinary judge by the first appointment and the court of the junior alcalde of the second election and that the said courts administered justice separately and that all the said courts separately possessed an equal and concurrent jurisdiction over all crimes and misdemeanors committed throughout the island and that previous to and up to the time of surrendering the island as aforesaid no appeal could be had or made from the judgment or determination given by any of the said courts whether the same was interlocutory or final or from any order whatever made by the said courts in any criminal cause to the other of them nor from any of the said courts or any judgment or determination thereof or order by them made to the governor of the island in any shape or manner whatsoever nor to any other tribunal in the island but that in all such cases an appeal might and could alone be made to a court called the royal audience of Caraccas held out of the island of Trinidad and within the province of Caraccas then and still under the dominion of the king of Spain from which court an appeal lay in such cases to the king of Spain and council of the Indies at Madrid and that previous to and up to the time of surrendering the said island as aforesaid it was necessary by law in all cases in which any sentence whether interlocutory or final was pronounced by any of the aforesaid courts in the island of Trinidad by which any party accused was adjudged to the infliction of corporal punishment such as death or whipping by the common hangman or of torture that such sentence although not appealed against could not according to the laws then existing in the said island of Trinidad be carried into execution until such sentence had been transmitted to the superior tribunal of the royal audience of Caraccas for its confirmation or rejection And the jurors aforesaid upon their oath aforesaid further say that after the said island was so surrendered to our said lord the king and taken possession of in his name that certain instructions were on the first day of March one thousand seven hundred and ninety-seven issued and given by the said sir Ralph Abercrombie then being commander in chief of his majesty's land forces in the said island of Trinidad to the said Thomas Picton which instructions were dated at head quarters Trinidad and that in and by virtue of the said instructions the said Tho-

mas Picton took upon himself the government and command of the said island. And the jurors aforesaid upon their oath aforesaid further say that it was by the said instructions among other things declared that it had been determined to be expedient to maintain the former laws of the colony used under the Spanish government and the said Thomas Picton was thereby among other things instructed as follows. In commercial and maritime cases the commandant will summon assessors from among the most intelligent merchants unconnected with the matter to assist him in the award or sentence he may give. And the jurors aforesaid upon their oath aforesaid further say that the said sir Ralph Abercrombie did under his hand and seal direct and grant to John Nihell then residing in the said island of Trinidad the following commission dated at Port of Spain Trinidad the first day of March one thousand seven hundred and ninety-seven. "The island of Trinidad having submitted to his majesty's arms by virtue of the powers in me vested I hereby appoint you John Nihell to be chief magistrate chief judge and auditor during his majesty's pleasure in and over the whole and every part of the said island. And I hereby require and command you to do and execute all things in due manner that shall belong to those different offices agreeable to the instructions and powers which shall by my orders be given you by lieutenant-colonel Picton whom I have appointed governor of the said island and which instructions and powers shall have the full force as if signed by myself. No provision having been made in the late capitulation for continuing the Spanish form of law in the administration of justice in the island. And that form of law having been continued solely by my circular letter to the captains of quarters and other magistrates in order to avoid the confusion which may arise from too strict an adherence to the forms of that law under an English government particular directions will be given you in your instructions from colonel Picton to explain fully my meaning and intention in this particular. In civil causes it shall be left to the option of either party to appeal from the sentence of your tribunal to the king in council provided the cause in litigation amounts to the value of five hundred pounds sterling. In criminal causes the appeal shall be to the governor and no sentence shall be executed till approved by him." And the jurors aforesaid upon their oath aforesaid further say that the said John Nihell in the said last-mentioned commission named did by virtue thereof take upon himself the office of chief magistrate chief judge and auditor in and over the said island. And that no other or further instructions were given to the said John Nihell by the said sir Ralph Abercrombie or by the said Thomas Picton called in

the said last-mentioned commission lieutenant colonel Picton in manner and form as is declared therein nor in any other manner or form whatever. And the jurors aforesaid upon their oath aforesaid further say that afterwards to wit on the first day of June one thousand eight hundred and one his present majesty did by commission under the great seal of the united kingdom of Great Britain and Ireland constitute the said Thomas Picton governor and commander in chief in and over the said island of Trinidad and did also on the said first day of June one thousand eight hundred and one from his court of Saint James's in this kingdom give and issue to the said Thomas Picton certain instructions whereby the said Thomas Picton was directed and commanded in the execution of the said commission to take upon himself the administration of the government of the said island and to do and execute all things belonging to his command there according to the said instructions. And the jurors aforesaid upon their oath aforesaid further say that the said instructions did contain the following articles respecting the government of the said island and administration of justice therein and no other respecting the administration of justice therein. "5th It is our will and pleasure that for the present the temporary administration of the island should as nearly as circumstances will permit be exercised by you according to the terms of the capitulation hereunto annexed in conformity to the ancient laws and institutions that subsisted within the same previous to the surrender of the said island to us subject to such directions as you shall now and hereafter receive from us under our signet or sign manual or by our order in our privy council or to such sudden and unforeseen emergencies as may render a departure therefrom absolutely necessary and unavoidable and which you are immediately to represent to one of our principal secretaries of state for our information. But it is nevertheless our especial command that all powers of the executive government within the said island as well civil as military shall be vested in you our governor or in the person having the government of the said island for the time being. And that such powers as were heretofore exercised by any person or persons separately or in conjunction with the governor of the said island shall be belonging solely to you our governor or to the person having the government of the said island for the time being. And it is our will and pleasure that all such public acts and judicial proceedings which before the surrender of the said island to us were in the name of his Catholic majesty shall henceforth be done issued and performed in our name. 6th You are to take especial care that all the British laws of trade and navigation as far as the same relate to any commercial intercourse between the said island and our do-

minions and all other countries be strictly observed and maintained 7th It is our will and pleasure that for the present and until our further pleasure shall be signified therein the same courts of judicature which subsisted in the said island previous to the surrender thereof to us shall for the present be continued in the exercise of all the judicial powers belonging to them in all criminal and civil cases and that they shall proceed according to the laws by which the said island was then governed and that such judicial powers as previous to the surrender of the said island to us were exercised by the Spanish governor shall be exercised by you our governor in like manner as the same were exercised previous to the surrender of that island" And the jurors aforesaid upon their oath aforesaid do further say that the capitulation referred to in the last-mentioned instructions was the capitulation herein above by them found to have been entered into between the said sir Ralph Abercrombie knight of the Bath Henry Harvey esquire and Don Joseph Maria Chacon And the jurors aforesaid upon their oath aforesaid further say that the said Thomas Picton did receive the said commission and instructions and take upon himself the government of the said island by virtue thereof in the month of July in the said year one thousand eight hundred and one and that no other or further directions at the time of giving and issuing the said instructions from thenceforth until the time of inflicting torture upon the said Luisa Calderon in manner hereinafter found were issued by his said majesty to the said Thomas Picton or were received by the said Thomas Picton under his majesty's signet or sign manual or by his said majesty's order in his privy council nor did there arise or happen at or between the time of giving and issuing the said instructions in manner above found and the time of inflicting torture on the said Luisa Calderon in manner as is hereinafter found any sudden or unforeseen emergency which did or might render a departure from the said instructions absolutely necessary and unavoidable nor did the said Thomas Picton between the time of the giving and issuing of the said instructions and the time of inflicting torture on the said Luisa Calderon represent to any one of his said majesty's principal secretaries of state for his said majesty's information that any such unforeseen emergency had happened as the said Thomas Picton was by the said instructions commanded and required if any such emergency had actually arisen or taken place And the jurors aforesaid upon their oath aforesaid farther say that on the seventh day of December in the year one thousand eight hundred and one a chest belonging to and then being in the house of one Pedro Ruiz a Spanish inhabitant of Port of Spain in the said island was broken open and two thousand hard dollars the goods and chattels of the said Pedro Ruiz taken therefrom and that the person who had

broken open the same and gained access thereto by breaking open the said Pedro Ruiz's dwelling-house That the said Pedro Ruiz complained to the said Thomas Picton that there was reasonable and probable cause as there really was to suspect that one Carlos Gonzales was the person by whom the said theft and robbery had been committed and that there was also reasonable and probable cause as there really was to suspect that Luisa Calderon in the within indictment mentioned and being one of the free coloured people of the said island was an accomplice in the same In consequence whereof the said Thomas Picton did cause the said Luisa Calderon and Carlos Gonzales to be apprehended and brought before him And they the jurors aforesaid upon their oath aforesaid farther say that there appeared to be reasonable and probable cause to proceed criminally against the said Luisa Calderon and Carlos Gonzales according to the law of the place in order to their being tried for the said theft and robbery the said Thomas Picton did on the said seventh day of December one thousand eight hundred and one make and issue an order to secure the persons of the said Luisa Calderon and Carlos Gonzales who were by virtue of the said order committed to the common or public gaol of the island of Trinidad And the jurors aforesaid upon their oath aforesaid farther say that the said Thomas Picton did refer the said cause to be adjudged and determined by one Saint Hilario Begorrat who was at the time when the said cause was so referred to him judge of the court called the court of the common or ordinary judge by the first appointment and which said court is otherwise called the court of the senior alcalde of the first election and which is hereinbefore found to have been one of the three courts which previous to the surrender of the said island to our lord the king was fully authorized to hear and determine causes respecting the commission of robbery theft and all other crimes and misdemeanors And the jurors aforesaid upon their oath aforesaid farther say that the said Hilario Begorrat in and by virtue of his authority of judge of the said court did take upon himself the cognizance of the said cause or prosecution and did proceed as such judge to examine into the said charge against the said Carlos Gonzales and Luisa Calderon for the said theft and robbery and did interrogate divers witnesses respecting the same and did reduce the said charge or accusation and the testimony given by the said witnesses and all the proceedings in the said cause in writing according to the form prescribed by the laws of Spain and of the laws by which the said island of Trinidad was governed at the time of the surrender thereof to our lord the king And the jurors aforesaid upon their oath aforesaid farther say that the said Hilario Begorrat did on the twenty-second day of December one thousand eight hundred and one proceed to the prison where the said Luisa Calderon

was then confined for the purpose of taking her deposition in the said cause and did then and there administer according to the forms of the Spanish law and of the said island an oath to the said Luisa Calderon to depose the truth to the best of her knowledge to whatever she might be interrogated. And the jurors aforesaid upon their oath aforesaid do farther say that the said Luisa Calderon was then and there questioned respecting the said theft and robbery and other circumstances that had occurred with the intent to ascertain the truth relative to the cause in question when the said Luisa Calderon in answer to the said question put to her by the said Hilario Begorrat fully denied who were the perpetrators of the said theft and robbery. And the jurors aforesaid upon their oath aforesaid do further say that the said examination of Luisa Calderon was by the said judge or by his directions reduced into writing was incorporated with written proceedings in the cause and that afterwards upon the same day the said Hilario Begorrat did as judge in the said cause pass an act or order therein which is in the words following "In consequence of a strong suspicion which his honor entertains of the mulata Luisa Calderon a domestic of Pedro Ruiz concealing the truth relative to the aforesaid robbery expressed in their proceedings and his honor being persuaded that she will discover the truth of the matter by means of a slight torment being inflicted on the said Luisa Calderon and whereas his honor is not entrusted with power to execute the same his excellency the governor and captain-general of this island is to be made acquainted hereof with the summary of this process by virtue of this document to the intent that his excellency may determine as may appear to him just the usual and requisite forms for that purpose to be adopted and observed by the notary in this cause and in pursuance hereof his honor thus decreed and ordered and he signed his name hereto which I the under-written notary attest this twenty-second day of the aforesaid month and year (signed) 'Begorrat.'" And the jurors aforesaid upon their oath aforesaid likewise say that the person referred to in the said act or order by the title and description of his honor is the said Hilario Begorrat and the person referred to in the said act or order by the title and description of the governor and captain-general of the island is the said Thomas Picton. And the jurors aforesaid upon their oaths aforesaid further say that one Francis de Castro being a person duly appointed according to the forms of the Spanish law and of the said island as the same existed therein at the time of the surrender thereof as aforesaid to record and attest proceedings in causes by the name and description of a notary and did in and under and by virtue of the said act or order by the said act or order in writing signed by the said Hilario Begorrat then being the

judge as aforesaid together with all the other proceedings in the said cause before the said Thomas Picton and the said Thomas Picton having perused and fully understood and considered the said act or order and the said proceedings did on the twenty-third day of December one thousand eight hundred and one direct the said notary to write and record it in and among the said proceedings so as to make it part thereof which order was in the words following "Apply the torture to Luisa Calderon Thomas Picton" And the said Thomas Picton did then and there sign and subscribe in his own hand-writing the name of him the said Thomas Picton to the last-mentioned order. And the jurors aforesaid upon their oath aforesaid do further say that the said last-mentioned order for applying the torture to the said Luisa Calderon was written and recorded by the said notary in and among the said proceedings with the full approbation participation and knowledge of the said Thomas Picton and that the same was intended and designed by the said Thomas Picton to authorize and empower the said Hilario Begorrat to apply torture to the said Luisa Calderon and with the view and determination and for the purpose that torture might be applied to the said Luisa Calderon and the said Thomas Picton having a full belief and conviction that torture might be lawfully applied to her in consequence and by virtue thereof but whether the said Thomas Picton had any or what power to make the said order or to authorize and empower the said Hilario Begorrat to apply the torture to the said Luisa Calderon the jurors aforesaid are ignorant and do therefore pray therein the advice of the Court here. And the jurors aforesaid upon their oath aforesaid further say that the said last mentioned order thus given signed and recorded by the said Thomas Picton was together with the acts and proceedings in the said cause by the direction of the said Thomas Picton transmitted back by the hands of the said notary to the said court of the judge of the first appointment in which court the said Hilario Begorrat still continued to preside and both the judge and the said cause was then and there received and proceeded in by the said Hilario Begorrat as the judge therein. And the jurors aforesaid upon their oaths aforesaid do further say that the said Hilario Begorrat did under and in pursuance of the said order herein found to be made and subscribed by the said Thomas Picton on the twenty-third day of December one thousand eight hundred and one pass an act or order in the said cause in the words following "At the Port of Spain in the Windward Island of Trinidad on the twenty-third day of December one thousand eight hundred and one His honour the ordinary judge of the first appointment having seen the acts of the cause in question together with the orders given by his excellency the governor and captain-general of the island by which he di-

“rects a slight torment to be inflicted for the purpose of investigating the truth relating to the robbery. He accordingly has decreed and hereby orders that the same shall be carried into execution on the same day to obviate further delays that may prejudice this cause. At the same time his honour observed that whereas the said Luisa Calderon did not appear to be twenty-five years old. His honour therefore reserved his intention of nominating for her a guardian or advocate. His honour then pronounced and ordered and signed his name hereto which I attest (Signed) ‘Begorrat’ before me Francisco de Castro.” And the jurors aforesaid upon their oath aforesaid do further say that the person referred to in this last mentioned act or order of the twenty-third day of December one thousand eight hundred and one by the title and description of his honour the ordinary judge of the first appointment and afterwards in the said act by the title and description of “his honour” is the aforesaid Hilario Begorrat. And that the other person referred to by the title and description of his excellency the governor and captain-general of this island is the said Thomas Picton. And the jurors aforesaid upon their oath aforesaid do further say that in pursuance of the said order hereby found to have been given and subscribed by the said Thomas Picton and which is referred to in the said last recited act or order of the twenty-third day of December one thousand eight hundred and one and in pursuance of the said last recited act or order the said Hilario Begorrat did upon the said twenty-third day of December one thousand eight hundred and one go to the common or public gaol of the said island where the said Luisa Calderon was at that time confined in irons and did then and there cause Francisco de Castro then being the notary in the said cause to make known to the said Luisa Calderon in the presence of the said Hilario Begorrat the said last-recited act or order for the torture of the said Luisa Calderon. And the said Luisa Calderon being then and there made acquainted with the contents thereof she did then and there say to the said Hilario Begorrat who fully heard and understood what she then said that she did not know who had committed the robbery on Pedro Ruiz. And the jurors aforesaid upon their oath aforesaid do further say that the said Hilario Begorrat thereupon and immediately after hearing the said answer given by the said Luisa Calderon he the said Hilario Begorrat still being in the room of the public or common prison where the said Luisa Calderon was at the time confined did in the presence of the notary Francisco de Castro and for the purpose of putting in force the said torment described in the said act or order of the twenty-third day of December one thousand eight hundred and one and by virtue and in pursuance and by the authority of the said order as is herein-before found to have been given by the said Thomas Picton did

administer an oath in due form to her the said Luisa Calderon and did then and there admonish the said Luisa Calderon to tell the truth relative to the persons who had been parties in the said robbery the said Hilario Begorrat thereby meaning the aforesaid robbery alleged to have been committed in the house of the said Pedro Ruiz and in what manner the same was committed for that otherwise the torment would be inflicted on her to which she had been condemned. And the said Hilario Begorrat then and there admonished her three times to the like effect. When the said Luisa Calderon answered that she did not know who were the delinquents that committed the robbery. Whereupon the said Hilario Begorrat ordered and caused the said Luisa Calderon to be conveyed to an upper room in the said public or common gaol in which upper room there had been previously placed a wooden stake one end of which was firmly fixed in the floor of the said upper room and the other end or point thereof was elevated perpendicularly above the surface of the floor of the said upper room to the height of six inches the said elevated point or end being of a circular shape and in diameter half an inch. And the jurors aforesaid upon their oath aforesaid do further say that perpendicularly over the aforesaid elevated point or end of the said stake a pulley with a rope passing through it was firmly fixed in and annexed to the ceiling of the said upper room so that any person affixed to one end of the said rope might be raised and drawn up from the said floor towards the ceiling of the said upper room by reason of a power applied to the other end of the said rope. And the jurors aforesaid upon their oath aforesaid do farther say that the instrument above described and by them as above found to have been placed in the said last mentioned upper room is called a piquet and was an instrument constructed and fixed in the said room by the order of the said Thomas Picton for the purpose of applying torture and that an instrument of this kind was first introduced in the said island of Trinidad by the said Thomas Picton after he had taken upon himself the government thereof and was first put up at the barrack yard for the purpose of military punishment and during the time that he continued to exercise the same. And the jurors aforesaid upon their oath aforesaid do farther say that the said Hilario Begorrat did after the said Luisa Calderon had been so conveyed into the upper room again admonish her for the last time to relate the truth to which she replied that she could not depose any thing else than what she had done before. And the jurors aforesaid upon their oath aforesaid farther say that the said Hilario Begorrat did immediately thereupon order and command one Jose Flores and one Raphael Chando who then were officers of justice of the said island and who were then present in the said last mentioned upper room to uphold and bind the said Luisa Calderon

And the jurors aforesaid upon their oath aforesaid do farther say that the said Luisa Calderon was instantly thereupon upheld and bound by the said Jose Flores and Raphael Chando in pursuance of the said commandment and in the presence of and with the knowledge of the said Hilario Begorrat. And the jurors aforesaid upon their oath aforesaid do farther say that immediately upon the said Luisa Calderon's being so upheld and bound the said Hilario Begorrat questioned the said Luisa Calderon what she knew of the robbery committed on Pedro Ruiz and in what manner it was perpetrated and bid her speak the truth to which the said Luisa Calderon replied that she knew nothing more than she had said before. And the jurors aforesaid upon their oaths aforesaid farther say that immediately upon the said last mentioned answer being given as aforesaid by the said Luisa Calderon to the said Hilario Begorrat and the same being then and there fully heard and understood by him the said Hilario Begorrat the said Jose Flores and Raphael Chando did then and there by the order and commandment of the said Hilario Begorrat and with his knowledge approbation and privity apply the torture to and did torture the said Luisa Calderon upon the said piquet in the following manner that is to say Jose Flores and Raphael Chando tied affixed and bound her right hand to the rope passing through the pulley of the said piquet and they also bound the left hand of the said Luisa Calderon to her right foot and immediately thereupon drew the other end of the said rope which passed through the said pulley and thereby pulled and raised up the said Luisa by her right wrist and then lowered down the said Luisa Calderon upon the elevated stake hereby found to be part of the said piquet by means whereof the entire weight of her body was sustained and supported by and upon the wrist of her right hand and the great toe of her left foot which great toe was by her weight violently and strongly pressed against the elevated point of the said stake hereby found to be and constitute part of the said piquet. And the jurors aforesaid upon their oath aforesaid do farther say that the said Luisa Calderon against her will and by the order and commandment of the said Hilario Begorrat and with his knowledge approbation and privity was then and there kept suspended upon the said piquet in the position above described for the space of fifty minutes and until the said Luisa Calderon fainted away and was deprived of all recollection and sensation by reason of the excessive pain and anguish then and there endured by her. And the jurors aforesaid upon their oath aforesaid do farther say that the said Luisa Calderon after fainting in manner aforesaid was taken down from the piquet by order of the said Hilario Begorrat. And the jurors aforesaid upon their oath aforesaid do farther say that on the following day being the twenty-fourth

day of December one thousand eight hundred and one the said Luisa Calderon in pursuance of the order herein above found to have been given and subscribed by the said Thomas Picton and also of the said act or order made by the said Hilario Begorrat on the twenty-third December one thousand eight hundred and one was a second time put to the torture in the presence of and by the verbal command of and with the knowledge approbation and privity of the said Hilario Begorrat but without any farther or other judgment or order than the said order hereinbefore found to have been given and subscribed by the said Thomas Picton and the said act or order made by the said Hilario Begorrat as aforesaid by being again raised and placed upon the said piquet by the same persons and in the same manner as she is by the said jurors hereinbefore found to have been on the twenty-third day of December one thousand eight hundred and one. And the jurors aforesaid upon their oath aforesaid do farther say that the said Luisa Calderon was on the said twenty-fourth day of December one thousand eight hundred and one by the commandment and with the knowledge approbation and privity of the said Hilario Begorrat against the will of the said Luisa then and there kept suspended upon the said piquet in the position abovescribed for the space of twenty-one minutes and until the said Luisa fainted away and was deprived of all recollection and sensation by reason of the excessive pain and anguish which she then and there in the presence of the said Hilario Begorrat and to his knowledge endured from the torment being so applied to her in manner last before found. And the jurors aforesaid upon their oath aforesaid do farther say that according to the laws of Spain being those by which the island was governed at the time when the said island was as aforesaid surrendered to our said lord the king every person being under the age of twenty-five years who was accused and charged with theft robbery or any other crime was entitled and as matter of right ought at the commencement of all proceedings against such person and before he or she and before any witness or witnesses were questioned or examined in any wise whatsoever touching the matters whereof such person was accused to have a person called a defensor appointed to conduct and manage his or her defence against such charge and that it was the office and duty of the judge of the court before which the said accusation was to be heard to appoint a defensor as aforesaid and to cause the person so appointed to take an oath in due form that he would conduct and manage the defence of the person so accused with integrity and fidelity and to the best of his knowledge skill and judgment which said appointment and oath ought to be reduced into writing and recorded at the beginning of the record or summary of the proceedings in this cause and before any deposition or any matter was inscribed there-

in And the jurors aforesaid upon their oath aforesaid say that the said Luisa Calderon was at the time when she was first sworn and examined by the said Hilario Begorrat in the said cause in manner hereinbefore found touching the said theft and robbery alleged to have been committed in the house of the said Pedro Ruiz and yet is under the age of twenty-five years And the jurors aforesaid upon their oath aforesaid do farther say that in fact no defensor was chosen appointed or sworn to conduct the defence of the said Luisa Calderon in the said cause and against the said charge of theft and robbery by the said Hilario Begorrat nor by any other person whatever before she and several witnesses were examined in the said cause touching the said theft and robbery nor before she was put to the torture on the said twenty-third and twenty-fourth day of December in manner as is hereinbefore found And the jurors aforesaid upon their oath aforesaid do farther say that the time when the aforesaid act or order hereinbefore found to have been passed by the said Hilario Begorrat on the twenty-third day of December one thousand eight hundred and one was together with the record or written summary of all the other proceedings in the said cause on the twenty-third day of December one thousand eight hundred and one laid before the said Thomas Picton by the notary in the said cause and at the time when the said Thomas Picton gave and subscribed the order for applying the torture to the said Luisa Calderon that it was not recorded or inserted in the record or written summary of the proceedings of the said cause neither did it appear in any manner whatever by the said record or written summary that a defensor had been appointed and sworn in the said cause to conduct the defence of the said Luisa Calderon against the said charge of theft and robbery And the jurors aforesaid upon their oath aforesaid do farther say that the said Thomas Picton did not in any wise personally interfere in the proceedings in the said cause otherwise than he is hereinbefore found to have done And that from the time that the said Luisa Calderon and Carlos Gonzales was first apprehended and brought before the said Thomas Picton until the torture was applied to the said Luisa as is hereinbefore found there was no person

in the said island of Trinidad who had taken the regular and proper degrees in the science of Spanish jurisprudence but that several persons so qualified had resided in the said island previous to its being surrendered to our said lord the king And the jurors aforesaid upon their oath aforesaid do farther say that the said Thomas Picton did not do or cause to be done any of the acts or proceedings hereby found to be done by him from any motives of malice towards the said Luisa Calderon except inasmuch as malice ought by law to be inferred from the several acts or proceedings or any of them of the said Thomas Picton in case the same shall be found to be illegal And if the Court shall upon the whole matter hereby found and submitted to the Court here be of opinion that the said acts and proceedings in manner as is hereinbefore found or any of them are illegal and that by law malice ought to be inferred therefrom the jurors aforesaid upon their oath aforesaid do say that the said Thomas Picton did wilfully and maliciously assault and imprison the said Luisa Calderon and cause her to be tortured in manner as is hereinbefore found But whether upon the whole matter aforesaid in form aforesaid found the said Thomas Picton be guilty of the premises charged upon him in and by the within written indictment or not the jurors aforesaid are wholly ignorant And hereupon they pray the advice of the Court here And if upon the whole matter aforesaid in form aforesaid found it shall appear to the said Court here that the said Thomas Picton is guilty of the premises charged upon him in and by the said indictment Then the jurors aforesaid upon their oath aforesaid say that the said Thomas Picton is guilty of the premises charged upon him in and by the said indictment in manner and form as in and by the said indictment is within alleged against him And if upon the whole matter aforesaid in form aforesaid found it shall appear to the said Court that the said Thomas Picton is not guilty of the premises charged upon him in and by the said indictment in manner and form as he the said Thomas Picton hath by pleading for himself within alleged then the jurors aforesaid upon their oath aforesaid say that the said Thomas Picton is not guilty thereof.

Argument on the Special Verdict.

COURT OF KING'S-BENCH,

Wednesday, February 10.

50 Geo. III A. D. 1810.

JUDGES.

The Right Hon. Edward Lord Ellenborough,
C. J.;

The Hon. Sir Nash Grose, Knt.;

The Hon. Sir Simon Le Blanc, Knt. ;
The Hon. Sir John Bayley, Knt.

Mr. Nolan.—My Lords, This is an indictment against the defendant, general Picton (here the learned counsel stated the indictment).

This case came on to be tried before the lord chief justice, at the sittings after Easter term, 1808, and the following special verdict was

found: The special verdict states, that previous to the 18th day of February 1797 the island of Trinidad was a colony belonging to the Crown of Spain, and that on that day the island was surrendered to his Britannic majesty, and reduced under his dominions, by virtue of certain articles of capitulation entered into between their excellencies sir Ralph Abercrombie, K. B. commander-in-chief of his Britannic majesty's land forces, and Henry Harvey, esq. commander-in-chief of his Britannic majesty's ships and vessels of war, on the one part, and Don Joseph Maria Chacon, Spanish governor and commander-in-chief of the island of Trinidad on the other; by which articles it was stipulated and agreed, that all contracts and purchases between individuals which have been done according to the laws of Spain, should be held binding and valid by the British government, that the free coloured people who had been acknowledged as such by the laws of Spain, should be protected in their liberties, persons, and property like other inhabitants; and the jurors further find that no stipulation was made or agreed upon; that the laws which had existed in the island previous to the surrender should continue or be in force other than as above provided. They likewise find that up to the time that the island was surrendered, the laws of Old Spain were in force, and they say that by the laws of Old Spain being in force in the island of Trinidad, at the time of its surrender, torture might be inflicted upon any person against whom there was strong suspicion of having committed any robbery or theft, or other atrocious crime, or of having been an accomplice therein, for the discovery of such crimes, but that such torture could not be applied until after the expiration of five days after the same had been ordered, and that the torture was by the said laws to be applied in a retired room, and in the presence of the judge, together with the escrivano, and executioners, without any other person being present. And the jurors further find that there were three courts in the island, which had jurisdiction to hear, and determine causes respecting the commission of robbery, theft, and all other crimes and misdemeanors, and that those courts were the courts of the governor of the island. The court of the senior alcalde of the first election, otherwise called the court of the common or ordinary judge by first appointment, and the courts of the junior alcalde, of the second election, and that these courts administered justice separately, and that they all separately possessed an equal and concurrent jurisdiction over all crimes and misdemeanors committed throughout the island, and that previous to, and up to the time of surrendering the island, no appeal could be had or made from the judgment or determination given by any of the said courts in any criminal cause, to the other of them, nor from any of the said courts to the governor of the island, in any shape or

manner whatsoever, nor to any other tribunal in the island; but that in all such cases an appeal might, and could alone be made to a court called the royal audience of Caraccas, held out of the island of Trinidad, within the province of Caraccas, then and still under the dominion of the king of Spain, from which court an appeal lay to the king of Spain in council of the Indies at Madrid, and that up to the time of surrendering the island, it was necessary by law in all cases in which any sentence, whether interlocutory or final, was pronounced by any of the courts in the island, by which any party accused was adjudged to suffer corporal punishment of any kind, that the same should be transmitted to the court of the royal audience of Caraccas, for its confirmation or rejection, and that no such sentence could, according to the laws then existing in the island, be carried into execution, although not appealed against until the same had been approved by the court of the royal audience of Caraccas. The special verdict then finds, that after the island was surrendered, certain instructions were, on the 1st of March, 1797, issued by the said sir Ralph Abercrombie, to the said Thomas Picton, whom the commander-in-chief appointed to be governor of the island, and that by virtue of those instructions, he took upon himself the government and command of the island, by which it was amongst other things, declared, that it had been determined to be expedient to maintain the former laws of the colony used under the Spanish government. The special verdict then states a commission granted by sir Ralph Abercrombie to John Nihell, by virtue of which the said John Nihell took upon himself the offices of chief magistrate, chief judge, and auditor, in and over the said island. The special verdict then finds, that on the 1st of June 1801, his majesty did, by commission, constitute the said Thomas Picton, governor and commander-in-chief of the island of Trinidad, and did also on the same day issue certain instructions to the said Thomas Picton. [The learned counsel read the commission and instruction to general Picton.] So that your lordships see that this commission and these instructions give general Picton no further power or authority in judicial matters than were given to the governor of the island of Trinidad, previous to its surrender, while it continued under the dominion of his Catholic majesty.

The special verdict then goes on to find that general Picton took upon himself the government of the island by virtue of this commission and instructions, in the month of July 1801; and that on the 7th of December 1801, a chest belonging to, and then being in the house of one Pedro Ruiz, a Spanish inhabitant of the island, was broken open and 2,000 dollars, the goods and chattels of the said Pedro Ruiz taken therefrom, and that the person who had broken open the same, had gained access thereto, by breaking open his

dwelling-house; that the said Pedro Ruiz complained to the said Thomas Picton that there was reasonable and probable cause, as there really was, to suspect that one Carlos Gonzales was the person by whom the said theft and robbery had been committed, and that there was also reasonable and probable cause, as there really was, to suspect that Luisa Calderon, being one of the free coloured people of the island, was an accomplice; in consequence of which Carlos Gonzales and Luisa Calderon were apprehended and brought before general Picton, on the 7th December 1801, who ordered them to be committed to the common or public gaol. It then goes on to find that the said Thomas Picton referred the said cause to be adjudged, and determined by one St. Hilario Begorrat, who was at that time the judge of the court called the court of the common or ordinary judge of the first appointment, and which said court is otherwise called the court of the senior alcalde of the first election, and which is hereinbefore found to be one of the three courts which, previous to the surrender of the said island to our lord the king, was fully authorized to hear and determine causes respecting the commission of robbery, theft, and all other crimes and misdemeanors, showing it to be one of the three courts that had cognizance of criminal matters before the cession of the island. It then goes on to state that Hilario Begorrat, by virtue of his authority, as judge of the said court, took upon himself the cognizance of the cause, proceeded to examine into the charge, in order to the trial of Carlos Gonzales and Luisa Calderon, for the theft and robbery, and interrogated divers witnesses respecting the same, and reduced the charge or accusation, and the testimony given by the witnesses, and all the proceedings in the cause, into writing, according to the form prescribed by the laws of Spain, and of the laws by which the island of Trinidad was governed at the time of its surrender. It then states that the said Hilario Begorrat did, on the 22nd of December 1801, proceed to the prison where Luisa Calderon was confined, for the purpose of taking her deposition, and administering to her an oath according to the forms of the Spanish laws.

My lords, I do not know, that any thing material will turn upon these circumstances, and therefore I will state them shortly to your lordships. It states, that Luisa Calderon denied any knowledge of who were the perpetrators of the robbery. It then states, that her examination was reduced into writing, upon which the said Hilario Begorrat passed an act or order, which says, that in consequence of a strong suspicion which his honour entertains of the mulatta, Luisa Calderon, a domestic of Pedro Ruiz, concealing the truth relative to the aforesaid robbery, and his honour being persuaded that she will discover the truth of the matter by means of a slight torment being inflicted on the said

Luisa Calderon. And whereas his honour is not intrusted with power to execute the same, his excellency, the governor, and captain-general of this island is to be made acquainted hereof, with the summary of this process. Then, after stating the formalities of the order, it goes on to state, that the notary, Francisco de Castro, laid the proceedings before general Picton, and the said Thomas Picton having perused, and fully understood and considered the said order, and the said proceedings, did, on the 23rd of December 1801, direct the said notary to write and record, in and among the said proceedings, so as to make part thereof, an order, in the words following: "Apply the torture to Luisa Calderon—Thomas Picton;" and the said Thomas Picton signed his name, in his own hand-writing, to the last-mentioned order, which was recorded by the notary, among the proceedings, with the approbation, and knowledge of the said Thomas Picton, and that it was intended by him to authorize the said Hilario Begorrat to apply torture to the said Luisa Calderon, the said Thomas Picton having a full belief and conviction that torture might lawfully be applied to her, in consequence of the opinion of the said Hilario Begorrat; but whether the said Thomas Picton had any, or what power to make the said order, or to authorize and empower the said Hilario Begorrat to apply the torture to the said Luisa Calderon, the jurors aforesaid are ignorant, and therefore pray the advice of the Court. It goes on to state that this order, was carried back by the notary to Begorrat as the judge in the cause, and that he, in pursuance of that order, on the 23rd of December 1801, passed an act or order for inflicting a slight torment without delay.

Your lordships will recollect that it is already found by the special verdict, that no torture could be applied until after the expiration of five days from the date of the order.

Mr. Justice Bayley.—The act of carrying it into execution was Begorrat's act.

Mr. Nolan.—Certainly it was, my lord.

It then goes on to state, that in pursuance of this order, the torture was inflicted upon this girl on two different days, and both times till she fainted and lost all recollection.

My lord, the verdict then goes on to state, that according to the laws of Spain, being those by which the island was governed at the time of its surrender, every person being under the age of 25 years, who was accused and charged with theft, or any other crime, was entitled, at the commencement of all proceedings, to have a person called a defensor appointed to conduct and manage his or her defence, and that it was the duty of the judge to appoint a defensor, who was to take an oath that he would manage the defence of the accused, with integrity and fidelity, and to the best of his knowledge, skill and judgment.

It then states, that Luisa Calderon was at the time she was charged with the robbery, and is yet, under the age of 25 years, and that no defensor was appointed to conduct her defence, against the charge of theft and robbery, by Begorrat or any other person, before she was put to the torture.

Lord *Ellenborough*.—It does not appear upon the face of those proceedings, that Begorrat knew she was under 25 years; or that she claimed any thing in consequence of her being under 25 years: this is matter against Begorrat only. Did she claim of Begorrat an allowance of a defensor, upon the ground of her being under 25? or did she in any other manner notify to him, that she was under 25?

Mr. *Nolan*.—It is expressly stated by him, that she was under the age of 25, and that he reserved to himself the power of appointing a defensor.

Lord *Ellenborough*.—Be so good as just to point to that part.

Mr. *Nolan*.—It certainly does not appear, upon the special verdict, otherwise than by that order, that general Picton knew she was under the age of 25.

Mr. Justice *Le Blanc*.—Was not that order made subsequent to the order that was made by general Picton? It was an order made in consequence of general Picton's order.

Lord *Ellenborough*.—Did it appear among any of the papers laid before general Picton, that the person to whom the torture was to be applied, was under the age of 25, and was refused to have a defensor appointed?

Mr. Justice *Le Blanc*.—That order was after the receipt of general Picton's order.

Mr. Justice *Bayley*.—I will read you the words: "His honour observed, that whereas, the said Luisa Calderon did not appear to be 25 years old; his honour therefore reserved his intention of nominating for her a guardian or advocate."

Mr. *Nolan*.—The order of general Picton was made on the 23rd December, 1801, and so was the order of Begorrat.

Mr. Justice *Le Blanc*.—But it certainly was in consequence of that order?

Lord *Ellenborough*.—Then one would think that part of the argument might be left out of the case; nothing material can be founded upon it.

Mr. *Nolan*.—My lord, I certainly will not state any thing that I think immaterial.

Lord *Ellenborough*.—Does it not really amount to this?—whether, inasmuch as there could be no appeal to the audience of Caraccas, by the constitution of the island there could be any corporal punishment whatever inflicted? Does it not go to that extent

—whether you could whip or inflict any capital punishment, or any other less punishment, inasmuch as you could not conform to the old laws by appealing to the audience of Caraccas? I do not intimate any opinion upon it, but is not that the broad question to be argued?

Mr. *Nolan*.—There are many other questions.

Lord *Ellenborough*.—There may be other questions which you may argue upon till the end of the term; but is not that the real arguable question? I shall most assuredly hear you upon all that your judgment may lead you to argue, having no doubt you will exercise that judgment with discretion.

Mr. *Nolan*.—I shall submit to your lordships nothing but what I think is material. My lords, the special verdict goes on to state, that from the time that the said Luisa Calderon and Carlos Gonzales were first apprehended, until the torture was applied, there was no person in the island of Trinidad who had taken the regular and proper degrees in the science of Spanish jurisprudence, but that several persons so qualified had resided in the island previous to its being surrendered, and upon these facts, they pray the advice of the Court whether the defendant is guilty or not.

My lords, it occurs to me, that the questions which are to be argued in this case are five. I shall state them in the first instance to the Court, and I shall never so far forget myself as to urge in any case, much less in a criminal prosecution, any point that I do not think in some degree sustainable. If there are any of those which I shall have the honor to urge, which shall upon their statement appear not to be tenable; I am sure it is neither the wish of those whom I represent, nor will it be my duty to attempt to maintain them one moment after the opinion of the Court is intimated to me.

My lords, the points that I wish to submit for the Court's consideration are—*first*, whether the law which authorized inflicting torture upon persons suspected or accused of crimes in the island of Trinidad, while it continued part of the dominion of the crown of Spain, was not annulled by the conquest of the island and its reduction under his majesty's dominion.

The *second* point is, whether, supposing the right to inflict torture so to have ceased, yet, as it is found by the special verdict, that the defendant who drew up and issued the order under which the torture was inflicted, did so without any direct malice against the person tortured, he is guilty of an indictable offence.

The *third* question will be, whether, supposing malice is to be inferred as an intentment of law from the illegality of the fact in any other person; yet, if the defendant acted in this instance as a judge, he can be made

criminally responsible for what was done by him in that character.

The *fourth* point is one upon which the Court intimated some opinion while I was opening the special verdict, and is, whether, though the defendant acted as a judge; yet, as he acted as a judge *in a colony*, he must not strictly conform in his judgment to that law under which the torture is applied.

The *fifth* and last question is upon the construction of the king's commission to general Picton; namely, whether he had any authority under that commission to act as a judge in this cause, and whether his conduct was not altogether extrajudicial, arbitrary, and unjustifiable.

Lord *Ellenborough*.—Whether he had any jurisdiction upon the question at all?

Mr. *Nolan*.—Yes, my lord; whether he had any jurisdiction upon the question at all.

My lords, in arguing these points (which I shall do as shortly as the magnitude of the questions will admit), your lordships will excuse my adverting to the admirable speech of my learned friend, Mr. Dallas, upon a former occasion, when this matter came before the Court, upon a motion for a new trial: I shall feel it my duty to advert to and consider the arguments used by him at that time, in point of fairness to my learned friend, Mr. Stephen, that if I am wrong in my view of them (they being all arguments addressed to the points, I have the honour of submitting to the Court), Mr. Stephen may have an opportunity of supporting them, and correcting any misapprehension of mine.

The first question is, whether torture did not cease at the time when the island was surrendered to his majesty by conquest? In considering that question, I shall examine first, whether it did not cease of necessity, as far as respected *all subjects of the crown who were so previous to the conquest*; and secondly, whether, if it ceased as to the king's natural born subjects, it did not also cease as to the antecedent inhabitants and settlers of the island who became subjects by the conquest. Upon this last question I shall say but little, as it was admitted in a great degree by my learned friends, when they argued this case in the former stage of it.

Lord *Ellenborough*.—Do I understand you to mean, whether, upon the cession of the island to his majesty, it did not cease in respect of such persons as were natural born subjects of the crown? and, in order to preserve an equality of law among all degrees of subjects, whether it did not, by consequence, also cease as to the other residents of the island.

Mr. *Nolan*.—Yes, my lord, those are the points I wish to state.

Mr. *Stephen*.—In order to save your lordships time in hearing, and my learned friend's

time in arguing the distinction with respect to the *lex loci*, I will state now that I do not mean to take any distinction between the new and old inhabitants.

Mr. *Nolan*.—It is necessary for me to state it.

Lord *Ellenborough*.—That is so broadly laid down by lord Mansfield in *Campbell v. Hall*,* that there cannot be a question upon it; there is no doubt it must subsist as to both, or cease as to both.

Mr. *Nolan*.—I shall give your lordships no trouble upon that point, because Mr. Dallas did concede it the last time the case was before the Court.

Now, my lords, it becomes necessary, in the first place, to see upon what grounds and principles it is, that torture cannot be applied in this country. If such a practice is expressly forbidden by *Magna Charta*; if it is repugnant to the fundamental principles of the British constitution; if it is as absurd as it is cruel and unjust;—in as much as it attempts by a very ineffectual mode, to procure that which, by our law, cannot be extorted, namely, a confession of the party against himself, and by means which our law prohibits, namely, by punishing him previous to the time when he is arraigned and tried;—I shall then contend, that exemption from torture is one of the indefeasible birth-rights of the British subject, which he carries with him into whatever country he may go, which is under allegiance to the crown of England.

The first authority that I find upon the subject is in *Fortescue De Laudibus Legum Angliæ*, c. 22, where that very learned judge, in drawing distinctions between the laws of England and those of France, states that torture cannot be applied in England.

The second authority is in the comment on *Magna Charta*, by lord Coke, who observes, † that the words *aliquo modo destruat*, expressly mean that no person shall be put to the torture.

His lordship afterwards, in his third Institute, lays down the same doctrine, and as my learned friend Mr. Dallas, commented in his argument upon the authority which is there cited, I will take the liberty of referring to a part of what is there remarked. He says, “Sir John Fortescue, chief-justice of England, wrote his book in commendation of the laws of England, and therein pre-ferreth the same for the government of this country before the civil law, and particularly, that all tortures and torments of parties accused were directly against the common laws of England, and showed the inconvenience thereof, by fearful example, to whom I refer you, being worthy your reading. So as there is no law to warrant

* Cowp. 208.

† Inst. 48.

"tortures in this land, nor can they be justified by any prescription being so lately brought in." * He then goes on to state, that the mode of proceeding is contrary to the law of God, and adds, "To conclude this point it is against Magna Charta, c. 29, 'nullus liber homo, &c. aut aliquo modo destruatur, &c. nisi per legale iudicium parium suorum aut per legem terræ. And accordingly, all the said ancient authors are against any pain or torment to be put or inflicted upon the prisoner before attainder nor after attainder, but according to the judgment, and there is no one opinion in our books or judicial record (that we have seen and remember) for the maintenance of tortures or torments." † So that your lordships see that lord Coke puts it as being directly contrary to Magna Charta, and the principles of the constitution.

The same doctrine is laid down by Mr. Justice Blackstone. ‡

Lord *Ellenborough*.—I dare say this will not be questioned on the other side for the purpose of agitating so odious a question as whether torture can be applied by the laws of this country.

Mr. *Nolan*.—My lord it was very much controverted in Mr. Dallas's former argument.

Lord *Ellenborough*.—I do not recollect that he contended torture could be applied at any place to any persons.

Mr. *Dallas*.—As well as I recollect, I drew a distinction upon that very passage contrasting between the common law of England and the civil law.

Mr. *Stephen*.—It will not be disputed that torture, if it ever was a part of the law of England, has ceased to be so, but when my learned friend proposes to prove that it is contrary to fundamental principles, I wish him to explain himself further.

Lord *Ellenborough*.—If you have any salvo in favour of torment we will hear you.

Mr. *Nolan*.—I know my learned friends agree with me, that torture can not be inflicted by the law of England; but they differ with me upon a point which is the very essence and vital principle of this argument, namely, whether the rule which prohibits the infliction of torture in this country, is a mere matter of positive regulation, or whether it is one of those rights which are formed upon Magna Charta and the principles of the British constitution; upon this point, as it appears to me, will mainly depend the question, whether it has ceased, or whether it remains in an island reduced under the British dominion by conquest.

* 3 Inst. 35.

† Ibid.

‡ 1 Comm. 133.

Mr. Justice *Le Blanc*.—At present this being an original argument, it will be more correct not to refer to what has been said on a former occasion by a gentleman who has not now an opportunity of answering you.

Lord *Ellenborough*.—In point of regularity it is improper to refer to the arguments of a gentleman who is not to argue the special verdict on the other side; I am quite sure you will defer to what is correct.

Mr. *Nolan*.—The next authority I was going to cite, to show that torture is contrary to the principles of the British constitution, is Mr. Justice Blackstone. Your lordships will find it in the 1st book and the 1st chapter of his Commentaries.—"At present, I shall only observe, that whenever the constitution of a state vests in any man, or body of men, a power of destroying at pleasure, without the direction of laws, the lives or members of the subject, such constitution is in the highest degree tyrannical: and that whenever any laws direct such destruction for light and trivial causes, such laws are likewise tyrannical, though in an inferior degree; because here the subject is aware of the danger he is exposed to, and may by prudent caution provide against it. The statute law of England does therefore very seldom, and the common law does never inflict any punishment extending to life or limb unless upon the highest necessity: and the constitution is an utter stranger to any arbitrary power of killing or maiming the subject without the express warrant of law. 'Nullus liber homo,' says the great charter, 'aliquo modo destruatur, nisi per legale iudicium parium suorum aut per legem terræ:' which words, 'aliquo modo destruatur,' according to sir Edward Coke, include a prohibition not only of killing and maiming, but also of torturing (to which our laws are strangers), and of every oppression by colour of an illegal authority." * Therefore, according to the opinion of this most learned judge, it appears that the practice of torture is not only forbidden by the law of this country, but by the constitution of this country.

My lords; it may be urged that the practice of torture is a mere civil regulation, because it is not contrary to reason or natural justice, and as such is admitted by the civil law. In the first place no absurd and immoral practice in one country can justify its existence in another. The civil law never was acknowledged as a rule of civil conduct in England, except in very peculiar cases. *Nolumus leges Angliæ mutari*, was the answer of one parliament to one attempt to introduce it. Sir John Davis, in the preface to his Reports, cites another from the rolls of

* 1 Comm. 133.

parliament. And again in 11th R. 2, "When a new course of proceeding in criminal causes according to the form of the civil law was propounded in that unruly parliament, answer was made by all the estates, that the realm of England neither had been in former times, nor hereafter should be ruled and governed by the civil law. Rot. Parl. 11, R. 2."* But the civil law, I take leave to state, did no such thing as authorise the application of torture to freemen. I admit that my acquaintance with that law is necessarily limited. But I have looked into the Digest, Lib. XLVIII, Tit. XVIII, de Questionibus, and can find no application of torture, but to persons in a state of slavery where the master was supposed to have a right to the life and limb of the party. It is taken for granted by Cicero, in his orations—that no person can be tortured unless he is a slave. My learned friends therefore stretch the doctrine of the civil law further than they ought to do, because without doing so, it is irrelevant to the present case, inasmuch as the person upon whom torture was inflicted here was free, and the civil law never did authorise torture upon persons of that description.

It has been also contended that torture is not prohibited as being contrary either to the law of God, or to the constitution, but merely as contrary to the custom of the realm, and the peculiar local positive institutions of the country. But lord Coke considered it as contrary to the fundamental principles of the constitution, and declares torture to be contrary to the laws of God, in a quaint manner certainly† but not with less force on that account. It is further relied upon that torture is not repugnant to the principles of the British constitution, because the law of England permitted the *peine forte et dure*—now, unless I very much mistake all the authorities upon the subject, no cases are more dissimilar than the infliction of the *peine forte et dure*, and that of torture. In the first place, the question here is what was the common law upon the subject? According to the best authorities, the *peine forte et dure* was introduced by stat. Westmr. 1, cap. 12. Such is the opinion of Stamford,‡ where he gives the reason for his opinion, namely, that Bracton who wrote immediately preceding the first statute of Westminster, makes no mention of that punishment, but states, that if a person stands mute by contempt, sentence is immediately pronounced against him as guilty, and the first person who mentions this punishment is Britton, who wrote immediately subsequent to the statute of Westminster.§

Lord Ellenborough.—That was not to com-

pel a confession, but to compel the party to plead which was an act in his own power to put himself upon trial.

Mr. Nolan.—Certainly my lord. If the offence was clergyable, the party would be entitled to the benefit of his clergy. Instead of being a punishment to compel a person to accuse himself, it was a positive judgment. It was not inflicted to extort a confession of the truth by the rack, under torment. But a judgment, the effect of which was, that the party was to be kept under the punishment adjudged until he died. It is as different in its principles, and as different in its mode of application, from the present case as any that could possibly be cited. Mr. Barrington, in his observations upon the statute of Westminster, 1st cap. 12, explains this punishment in the same way. If, then, according to the fundamental laws and constitution of England, torture is prohibited in this country, the question is, whether British subjects are to lose this fundamental personal right, by removing out of this kingdom, or in other words whether the benefit of the English constitution, is to be denied to English subjects resident in a colony of England?

In arguing this point, it may become me to premise, that there are two questions upon which I do not mean to touch in this stage of the argument. One of them has been long settled, namely, that it is in the power of the crown to make laws for a colony annexed to the dominion of England. But I shall cite authorities to show that this prerogative is so far limited and qualified, that the king cannot make fresh laws in violation of what are called fundamentals.

The other point which I need not agitate is, as to what the consequence might be, if there was an express stipulation, that the laws of the conquered country should be preserved. It does not arise in this case because it is negated by the verdict, that any stipulation was made as to the preservation of the criminal laws of the country. Sir W. Blackstone says, "The absolute rights of every Englishman (which, taken in a political and extensive sense, are usually called their liberties), as they are founded on nature and reason, so they are coeval with our form of government; though subject at times to fluctuate and change: their establishment (excellent as it is) being still human. At some times we have seen them depressed by overbearing and tyrannical princes; at others so luxuriant as even to tend to anarchy, a worse state than tyranny itself, as any government is better than none at all. But the vigour of our free constitution has always delivered the nation from these embarrassments, and, as soon as the convulsions consequent on the struggle have been over, the balance of our rights and liberties has settled to its proper level ;

* Davis's Rep. Preface, p. 4.

† 3 Inst. 35.

‡ P. C. Lib. II. c. 60. fol. 149.

§ See as to this 2 H. P. C. 321, 322.

"and their fundamental articles have been from time to time asserted in parliament, as often as they were thought to be in danger."*

The learned author enumerates a number of statutes that have been passed to confirm them—the Great Charter, the Confirmation of it, the Petition of Right, the Habeas Corpus act, the Bill of Rights—and then concludes in these words, "Lastly, these liberties were again asserted at the commencement of the present century, in the *Act of Settlement*, whereby the crown was limited to his present majesty's illustrious house: and some new provisions were added at the same fortunate era for better securing our religion, laws, and liberties; which the statute declares to be *the birth-right of the people of England*."

My lords, the question now is, whether this their birth-right is to be limited to their continuance in this country? It is a most important and extensive question when it is considered that we are a great commercial people, and that the king has power to send his subjects out of the country, for civil as well as military purposes.

There is, in my humble judgment, a very great distinction between those rights which are called by text writers absolute rights, being rights which are inherent in the subjects person, and most of those rights which are connected with property. The king as grantor, may, at least to some reasonable extent, annex limitations to the enjoyment or possession of colonial property, which can only be taken upon those conditions. The act of the occupier in taking to that property is voluntary, and he submits to the conditions by the act of occupation. But the question is altogether different whether the subject shall be deprived of his personal liberty and personal rights, solely by his coming into a colony; for as he is put to no option, and receives no equivalent, there is no reason why he should not carry these privileges with him, into all the dominions annexed to the crown of England.

Lord *Ellenborough*.—Do you mean that the king could not receive an island by capitulation under the protection of the crown of Great Britain, with a continuance of all the laws, civil and ecclesiastical, as they subsisted in that island, before the cession, some of those being radically repugnant to the general principles of the constitution? for instance, this is a Spanish island in which the authority of the inquisition had obtained, and which was in the habit of inflicting torture; would you say, if there had been an unconditional acceptance by the crown of Great Britain, in all respects preserving the laws, civil and ecclesiastical, that supposing the inquisition and infliction of torture made a part of the law, the king could not have made a valid capitulation, so as to continue that constitution generally in the island of Trinidad?

Mr. *Nolan*.—My lord, that is a question I did not mean to agitate upon the present occasion, as not being before the Court.

Lord *Ellenborough*.—Yes, incidentally it is; I want to know the extent of your proposition, and whether you contend that the crown upon a conquest would, in making the capitulation, be limited to the extent I have stated.

Mr. *Nolan*.—I deliberately avoided going into that question; but if your lordships wish me to argue it, I think there are very strong reasons which induce me to believe that the crown is so limited.

Lord *Ellenborough*.—It made a part of your argument, and I wished to know if you could sustain it to that extent: you stated that the king could not make laws contrary to fundamental principles.

Mr. *Nolan*.—Whether the crown can by stipulation accede to laws contrary to fundamental principles, I have not made a part of my argument.

Lord *Ellenborough*.—You must necessarily make it a part of your argument.

Mr. *Nolan*.—I think I shall be able to sustain the proposition that the crown would be so limited; but I humbly conceive, that it is not necessary for me to establish that point, and I cautiously abstained from entering into it. In my opinion, nothing is more improper than to agitate questions respecting the crown's prerogative, unless they come immediately before the Court. I therefore wished to refrain from it; but I am not afraid to argue that point, if your lordships think it necessary. It has been laid down in *Calvin's case*,* that the people's allegiance and the crown's protection are reciprocal, and extend as far as the king's dominions extend. But the principle for which my learned friends must contend to day, is, that the privileges of English subjects and their corresponding duties are locally confined to the United Kingdoms of Great Britain and Ireland. This has been negatived by various decisions. It has been decided, that if the king goes out of this country, taking with him several of the subjects of the country, they are subject to the laws of England while they continue with their sovereign. That was laid down so long ago as in *Fleta book 2, Cap. 3, Section 9*. From the case of the union between England and Scotland,† it appears that if subjects go from this country as part of the king's army, they are entitled to the benefit of the English law, and except so far as they are affected by military law, they are entitled on the one hand to the same privileges, as they are subject on the other to the same pains and penalties. If then, where the king goes out of England, the subjects are entitled to the benefit of the law, shall his deputy in a colonial dependancy have a greater au-

* 1 Comm. 127.

* 7 Rep. 1.

† Moore, 798.

authority over the rest of his fellow-subjects than the king has? This very Court may travel out of the kingdom with the king. It has travelled with the king into Scotland, in the reign of Edward the 1st. Was it not to administer justice there according to the laws of England, and not according to the laws of Scotland? This and such cases show (for which purpose I only cite them) that the English law is not confined to the limits of England, but that there are certain circumstances in which they extend even beyond the king's dominions.

Lord *Ellenborough*.—I think our return is, wherever we shall be in England.

Mr. *Nolan*.—The return is adapted to the usual and accustomed situation of the Court. My lord, I will now cite another authority.

“The king may, by his great seal, command all his subjects that be under his obedience, wheresoever they be in the world: so he did in Normandy, so he did in Aquitaine, so he did in that part of Scotland that he had in possession. And in 24, Edw. 1st, his judges kept ordinary courts of justice there.”* My argument, therefore, is, that as the Court of King's-bench could not have sat in Scotland to decide according to the law of that country, or any other arbitrary law, they must have decided according to the law of England; and, consequently, the operation of that law extends beyond the local jurisdiction of this country.

Lord *Ellenborough*.—By the courtesy of nations, if any king should reside here, he would have a right to exercise criminal judicature in his own palace; but that is a species of criminal judicature, of the exercise of which this Court would be jealous; however, we need not argue these extreme cases.

Mr. *Nolan*.—My lord, in the case put, there was no courtesy of nations, and the rule is laid down so as to extend to cases of civil as well as to those of criminal jurisprudence. Edward the 1st occupied Scotland, *jure belli*, as a conqueror. It is laid down by lord chief justice Vaughan, in his Reports page 402; the reasons why some of the king's writs run into other parts of his dominions are, 1st, “That without such right the law appointed or permitted to such inferior dominion, might be insensibly changed within itself, without the assent of the dominion superior. Secondly, judgments might be there given to the disadvantage or lessening of the superiority, which cannot be reasonable, or to make the superiority to be only of the kings, not of the crown of England, as king James once would have it, in the case of Ireland, *ex relatione* J. Selden *mihi*, whom king James consulted on this question.” My argument, therefore, is this: These dominions by conquest, are not merely domi-

nions of the king, but parcel of the dominion of the crown of England; and the courts of the crown of England, which are governed by the common laws of England, have a superintending power over their courts and over the administration of justice there. The reason why they have that power, as given by lord chief justice Vaughan, is, to preserve a paramount control over those dominions. If, therefore, the colonies remain thus dependant upon the crown of England, they must be subject to those fundamental laws to which the crown itself is subject in England. It is upon the same principle that the parliament of this realm exercises a paramount right of legislating over such colonies. Can it then be contended, that when that parliament, in making laws for both or either of these countries, must attend to the principles of the British constitution, that the king, acting, as is stated by lord Mansfield, under a subordinate power, can make or sanction either by treaty, capitulation, or otherwise, the creation or continuance of laws which are in direct repugnance to those principles? Upon what ground either of state necessity, civil convenience or other political principle, is it to be asserted that the act of treating with an enemy invests a limited monarch with larger power and more despotic dominion over the chartered rights of his natural-born subjects, than he had previously possessed? Surely so far as the power of binding the British people is inherent in the British sovereign (independent of parliament), it exists in the crown, but as part of its prerogative; and it is laid down, that no prerogative of the king can be claimed, which is contrary to Magna Charta* and the principles of the constitution.

Mr. Justice *Bayley*.—That is, in this kingdom.

Mr. *Nolan*.—There is no such limitation stated in the Books, none such in any decided case; and I must take the liberty of saying, that such a distinction cannot be sustained upon the principles of sound sense or English freedom. The constitution of this country tolerates no such autocratic principle any where either within or without the kingdom.

My lords, we may illustrate and confirm this argument by analogy drawn from the conduct of Great Britain herself towards those colonies which have been conquered; she throws open all her privileges, and extends her rights to her subjects who become so by conquest. They are capable of inheriting and taking property, they are no longer aliens to any effect whatever; and shall it be said, that the law of England operates with less liberality and less anxious solicitude for the protection of its own subjects, in the conquered soil than it does in her own for those who have been formerly aliens? I will put one question to my learned friends—if such a

* Lord Chancellor Ellesmere's judgment in the case of the Postnati, 11 Hargr. St. Tr. 103; 2 How. St. Tr. 682.

* 2 Inst. 36; 4 Com. Dig. tit. Prerogative, Lett. (A).

right exists, by what means, and when did it commence over the subjects of the king of England? His majesty sends an army under sir Ralph Abercrombie, or any other distinguished general, into the island of Trinidad:—up to the time of the conquest, I take it to be quite clear, that if the laws of that country are at all inimical to the rights of the crown or to our martial law, they are so far inoperative.—There are also many subjects of the crown attached to an army, who are not subject to military law, as is mentioned in *Fabrigas v. Mostyn*.* Can it be contended, that previous to the conquest, those persons are *ratione soli* liable to all the harsh, cruel, and senseless laws, that may exist in that country, from which their military brethren are exempt? If this be so, and surely no man is sufficiently hardy to deny it, can it be said, that the meritorious exertion of his majesty's subjects in obtaining fresh acquisitions to the crown, shall be the means of depriving them of the privileges they had before the conquest? Will my learned friends go the length of stating, that the meritorious act of conquest, has the effect adverted to by Mr. Locke; and, that instead of the conqueror wearing the laurels that belong to him, he must make great and ignominious sacrifices of his undoubted rights and privileges, as the direct consequence of his victory. Mr. Locke, in his treatise on Government†, says, that the conqueror can derive no rights over his fellow conquerors, by reason of the conquest. The same is stated by Barbeyrac, in his comment upon Puffendorff, book 8, cap. 6, sec. 21.

Neither is the opinion for which I am contending, without support from later authorities in our law. In 4th Comyns's Digest‡ it is laid down, that “the common law is the inheritance of all the subjects of the realm. And, therefore, in the plantations, or elsewhere, where colonies of English are settled, they are to be governed by the law of England;” and he cites Ca. Parl. 31. So in 4 Comyns's Digest, title Navigation (G. 1), this is stated: “The plantations are colonies of the kingdom of England, which belong to the crown and kingdom, and are part of their dominion. The inhabitants there are within the king's allegiance, and subject to the laws of England.”

The same doctrine is laid down by lord chief justice Vaughan, in Crowe and Ramsay, where he observes, “Therefore neither natives nor persons naturalized or denizenized of England or their successors, can ever be aliens in Ireland, which they conquered and subjected; and though this is *de jure belli et gentium*, observe what is said, and truly, by sir Edward Coke, in Calvin's case, in pursuance of other things said concerning Ireland. In the conquest of a Christian kingdom, as well those that served in war

“at the conquest, as those that remained at home for the safety and peace of their country, and other the king's subjects, as well *ante nati* as *post nati*, are capable of lands in the kingdom or country conquered, and may maintain any real action, and have the like privileges there as they have in England.”

This is the opinion of lord chief justice Vaughan, assenting to the doctrine laid down by lord Coke, in Calvin's case, and none of these great judges entertained a doubt, that some of the privileges of the people of Great Britain attended them beyond the seas.

The principles of law, then, for which I am contending, are two. The first is, that if the laws of an inferior jurisdiction are contradictory, and repugnant to the principles of the laws of the superior jurisdiction, they must cease unless they are preserved by capitulation; and the other is, that the personal rights and privileges belonging to the British subject, follow him into every foreign country, where he is exempt from local allegiance to some other sovereign power, and cannot be taken away or diminished in this limited monarchy, even by articles of capitulation, unless they are subsequently sanctioned by parliament.

These are not merely principles of our law, they are also principles of the civil law. It is laid down by Bynkershoek, that the laws of the free states of Rome, yielded to those of Rome itself. Your lordships will find this in his comment upon the 9th law in the Digest, the 2nd volume of his works, page 115, in which he quotes other authors. I have looked into the whole of them, and they go the length of maintaining this proposition, namely, that the Roman jurisdiction was paramount to that of all their colonies. The colonies enjoyed an inferior or subordinate power of legislation; but they were prohibited from such innovation upon the general law of the entire empire, as amounted to a departure from its general fundamental principles.

Your lordships know very well, that this doctrine, as it refers to the particular case of torment, has in more than one instance upon record been allowed and admitted. In the commencement of my argument, I stated that torture was not allowed to be inflicted upon persons free of the city of Rome, and I quoted an instance from Cicero's Orations, where a charge was made against a Roman prætor, that he had tortured a Roman citizen. There was no doubt that by the colonial law of Sicily, the party might have been tortured, but the orator takes his stand upon the personal immunity arising from the privileges possessed by a Roman citizen.

My lord, there is another instance with which all your lordships are acquainted, being taken from holy writ itself. The apostle Paul, when he was condemned to be scourged, claimed the privileges of a Roman citizen, as being a free-born citizen of Tarsus in Cilicia, and he had the privilege allowed him. It is

* Cowp. 175, 176.

† Book 2, C. 19, S. 185. | ‡ Tit. Ley, (C).

observable that in Calvin's case,* lord Coke cites this very case of the apostle Paul, and comments upon it as one in point, to show that allegiance to the Crown extends beyond the mere limits of England, and that the privileges of the people of that country were enjoyed beyond the capital of the empire in which the laws were enacted.

I was anxious to ground upon principle, and fortify by analogy, the proposition which I set out with attempting to establish, before I referred to the cases which bear directly upon the point, which are first, Calvin's case, 7th Coke, fo. 17, b: and there the positions laid down are, that "if a king come to a Christian kingdom by conquest, seeing that he had *vita et necis potestatem*, he may at his pleasure alter and change the laws of that kingdom; but until he doth make an alteration of those laws, the ancient laws of the kingdom remain. But if a Christian king should conquer a kingdom of an infidel, and bring them under his subjection, there, *ipso facto*, the laws of the infidel are abrogated."

The next case is *Blankard v. Galdy*;† and the 3rd is 2 Peere Williams 75, a case which I shall trouble your lordship with, as most material, because it explains or encounters the 4th resolution stated by lord Mansfield, in *Campbell v. Hall*.‡

Lord *Ellenborough*.—I think he does not state them as the *resolutions of the Court*.

Mr. *Nolan*.—No, my lord; he merely states them as the principles of his own judgment. The resolutions in Peere Williams are these: "Memorandum 9th, August, 1722. It was said by the master of the rolls, to have been determined by the lords of the privy council, upon an appeal to the king in council, from the foreign plantations,"—your lordship will observe, that, at this time, lord Hardwicke was attorney-general. I mention this, because it was a circumstance much relied upon by lord Mansfield, who remarks, that about this time lord Hardwicke was in office, either as attorney or solicitor-general.

It is stated—"First, if there be a new and uninhabited country found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and therefore such new found country is to be governed by the laws of England; though after such country is inhabited by the English, acts of parliament made in England, without naming the foreign plantations, will not bind them;"—that is very clear, because they are not in contemplation of the legislature;—"for which reason, it has been determined that the statute of frauds and perjuries, which requires three witnesses, and that these should subscribe in the testator's presence, in the case of a devise of land, does not bind Barbadoes: but that, secondly, where the king of England conquers a

country, it is a different consideration: for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people; in consequence of which, he may impose upon them what laws he pleases."

Now, my lords, in the first place, I am not called upon here to dispute this proposition, even to the extent it is stated; but you will find it is qualified and limited in a great degree, by the 6th proposition laid down in the case of *Campbell and Hall*, and in truth all those general propositions must be considered as being subject to some limitation. The first position stated by lord Coke is, that where you conquer a Christian country, the laws of that country continue.

This to its utmost extent, cannot possibly be true; for, in the first place, all the laws which exclusively favour the mother country at the time of the conquest must cease, because they would be repugnant to the direct interests of the conquering country. So all laws that are repugnant to the religion of the conquering country, must cease. No man will tell me, and I am sure no man can argue with success in the case which I formerly put,* that if by the law of Spain any of its subjects who exercised the Protestant religion should be punished with death, or that whoever converted an inhabitant from the Catholic to the Protestant religion, should be burnt, that such laws would remain. It is observed by Grotius, Lib. 3, Cap. 15, S. 11, that it is not only the right but the duty of the conqueror to protect the first religion. Now let us go a little further. It is laid down by lord Mansfield that there is no distinction between a conquest made from infidels, and a conquest made from Christians. Is it to be contended from this proposition, that in various countries where there are laws repugnant to reason, religion, and humanity, those laws are to remain until the pleasure of the Crown is taken and known as to their continuance? There are laws in India by which a wife may be allowed to burn herself with her deceased husband. There are laws in some places by which parents expose their children, and there are laws in other places under which children are justified in exposing their parents to die of famine or be devoured by wild beasts. These laws being repugnant to reason, religion, and humanity; will my learned friend say that they are to continue and bind his majesty's natural born subjects as well as those he has acquired by conquest? My learned friend must go the whole of that length, or he cannot stir a step. If it is a general position, it must extend to all countries and all jurisdictions, to all laws and to all religions, and every thing else, however contrary to the laws of God, and however repugnant to the feelings of humanity.

* 7 Rep. 24. † 2 Salk. 411. ‡ Cowp. 208.

* *Ante*, p. 743.

If my learned friend, perceiving that he cannot carry his proposition to that extent, gives me, as an admission, that the laws must be limited according to the resolution in *Peere Williams*, then we come round again to the point, whether, if they are limited at all, they should not be limited in this particular instance now before the Court. It appears, on consulting the writers upon the law of nations, that neither Grotius, nor Puffendorff contemplated such a case, or how the rights of fellow labourers in the conquest could be thereby affected. The only authors, so far as I have searched, who allude to such cases, are Barbeyrac and Locke, who negative any right to bind them, as resulting from the act of conquest.

To put it in a more particular way: If a subject of Great Britain has a right to the liberty of his conscience, why should he not have a right to his personal liberty? By the English law he is not to be punished till he is convicted, that is, he is not to be punished first, and afterwards condemned for the purpose of justifying the punishment. Will my learned friend point out what are the distinctions in reason and common sense, between the one case and these other? If he cannot point them out, I say, with deference, but with confidence, that if the laws of a conquered country cannot prevail so far as to affect the religion of the conquerors, they cannot prevail so as to affect any other of their fundamental rights.

The next position that is laid down in *Peere Williams* is decisive upon this point: "Until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place; unless where these are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail."

It is to be recollected, that this decision is a decision of the privy council, peculiarly conversant with these subjects, and limiting to a certain degree the prerogative of the crown in its foreign colonies. It states that the laws against religion must cease, and it gives this good reason for it, that they are laws which are *mala in se*. The crown by virtue of its prerogative becomes immediately the enforcer of those laws which bind its subjects; and will my learned friend in order to extend the prerogatives of the Crown, venture to say, that the crown can *proprio vigore* enforce laws which are not less repugnant to religion and common sense, than to the laws of this country, to which such colonies are no more than an appendage. This resolution admits all I contend for; if all laws that are *mala in se* cease until the king's pleasure is known, the law of torture is surely one of these laws. It ceases, therefore, and properly, for two reasons.—In the first place, the subjects of the Crown are not compellable to obey a law that is utterly repugnant to the principles of virtue, unless sanctioned by their own legislation; and secondly, it is im-

possible that the crown can be made instrumental in enforcing such a law. Those are fundamental principles.

Mr. Justice Bayley.—I do not apprehend it will be conceded to you that the law of torture is *malum in se*.

Mr. Nolan.—My lord, that is the reason why I took so much pains in the outset of my argument, to show that it is repugnant to the principles of common sense and nature—that it is equally repugnant to and forbidden by the British constitution, that it is therefore *malum in se*, and consequently, that the king by his prerogative cannot enforce it.

I come next to the case of *Campbell v. Hall*. The first proposition is, that "a country conquered by the British arms becomes a dominion of the king in the right of his crown; and, therefore, necessarily subject to the legislature, the parliament of Great Britain. The second is, that the conquered inhabitants once received under the king's protection, become subjects, and are to be universally considered in that light, not as enemies or aliens. The third, that the articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning. The 4th, that the law and legislative government of every dominion, equally affects all persons and all property within the limits thereof."*

That point I understand to be conceded to me, and therefore I shall not trouble your lordships upon it. "The 5th, that the laws of a conquered country continue in force, until they are altered by the conqueror; the absurd exception as to Pagans, mentioned in Calvin's case, shows the universality and antiquity of the maxim. For that distinction could not exist before the Christian æra; and in all probability arose from the mad enthusiasm of the Croisades. In the present case the capitulation expressly provides and agrees, that they shall continue to be governed by their own laws, until his majesty's further pleasure shall be known."† Perhaps, my lord, the only observation I should make upon the latter part of this position is, that the exception in Calvin's case goes only this length, and was intended to go no further; namely, to show the opinion of the learned judges at that time to have been, that all laws of a conquered country, repugnant to the principles of Christianity must cease; I do not therefore take it to be laid down in Calvin's case generally, that all the laws of the Pagan country cease, but only those which are repugnant to our religious and moral creed: the principle in Calvin's case up to that extent is founded upon the law of nations, and confirmed by the law of this country.

My lords, with regard to the fifth of lord Mansfield's positions I have already shown that taking it as a general proposition,

* Cowp. 208. † Cowp. 209.

it is not only repugnant to the resolutions in *Peere Williams*, but cannot be true, because the laws that are contrary to religion, and the laws that are contrary to reason, are *mala in se*. I am sure your lordships will excuse me; I have no wish to enter into this point at greater length, but I feel it to be one of extreme importance. The 5th resolution in the case of *Campbell and Hall*, therefore, is so far contradicted by the 3rd resolution in *Peere Williams*, and indeed by the doctrine laid down in the 6th position, in *Campbell v. Hall* itself: "The 6th and last proposition is, that if the king (and when I say the king, I always mean the king without the concurrence of parliament) has a power to alter the old and introduce new laws in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in parliament, he cannot make any new change contrary to fundamental principles; he cannot exempt an inhabitant from that particular dominion; as, for instance, from the laws of trade, or from the power of parliament, or give him privileges exclusive of his other subjects; and so in many other instances which might be put."*

Now, if he cannot give the conquered these privileges distinct from his other subjects, upon what principle is it that he can take away the privileges which his other subjects enjoyed before? This position limits in terms the prerogative of the crown, to the making of laws, and may thereby impliedly infer that the king can continue laws which he cannot create. But there is no distinction in principle between the crown's prerogative in making despotic laws, and in suffering such laws to continue which have been made by others. The reason which circumscribes and limits the royal prerogative by the rights of the people, in the one case applies equally to the other. It is to protect us against the possibility of despotism or oppression in both.

But my lords, I must again re-urge that the extent of the king's power to bind his people, as their authorized functionary by treaty or capitulation, does not arise in the case before the Court. To whatever extent that prerogative exists, it is created and limited by the discharge of that function by which it subsists, and for which it was given. But here the king has made no compact or stipulation for the preservation of those laws. The case is in that respect the same as if the island had been surrendered without any capitulation whatever. I take the liberty of submitting therefore, that if the resolutions in *Peere Williams* and the resolutions in *Hall and Campbell* are to be taken together, it will be found that the 5th resolution in the latter case must be considered as admitting the exceptions laid down in *Peere Williams* under which is included that of torture. On the other hand the resolution in *Peere Williams*, which seems to admit of the absolute right to make laws, must

be considered as limited in the way laid down by lord Mansfield, in his 6th proposition in *Campbell v. Hall*, so as to restrict the prerogative of the Crown from altering fundamental laws, all laws comprehended in and insisted upon by Magna Charta being fundamental laws of this country. We come next to apply the principle laid down in the first resolution in *Peere Williams*, namely, that the king's laws are the birthright of every subject, which he carries with him wherever he goes.

Mr. Justice *Bayley*.—A man who goes from hence to Trinidad, would carry with him all the laws of this country: that is the substance of what you state.

Mr. *Nolan*.—By no means. That is nothing like the position for which I contend, neither is it a consequence fairly deducible from it. I did state that with regard to property, the conqueror, which in our law is the crown, might annex any conditions it pleased to its vesting in the subject, and might at the same time impose any regulations, conceived to be necessary for the preservation of the conquest, and its internal regulation and government. I further state that for wise reasons, the power of creating such particular laws is given to the king, but such institutions cannot vary from the general principles of the common law of this country. The particular local laws of the colony where a subject goes to settle, must be considered as extending to him; but those principles of law and personal rights, which he may enjoy in all countries, are engrafted and embodied in the local laws, so as to protect him in their possession, except so far as they are affected by competent, that is by legislative authority. Such I take to be the meaning of the first resolution of *Peere Williams*, and the authorities I cited before, which assert that the law is the birthright and inheritance of the subject. There may be particular regulations, such as we find in the Register act, or in turnpike laws and many other instances, which it would be absurd to suppose extended to any of the king's dominions, but this kingdom, or some particular district within it, upon which and which alone they were designed to operate. But those laws to which my proposition refers, are the fundamental laws of the country, those which are called by the Act of Settlement the indefeasible birthright of the subject, which as such are inalienable and cannot be taken away from the parties who possess them. In other words the distinction I have endeavoured to make is conformable to what is laid down in *Blackstone's Commentaries*,* that the application of the laws of the country to plantations belonging to England, must be understood with considerable limitations, because much of the local law of this country would not apply. So far as it does, so far it prevails. Is there any reason why it should not prevail in one colony as well as

another, or why it should not prevail in a country obtained by conquest as well as by discovery?

Mr. Justice Bayley.—So that, if by the laws of Trinidad you can arrest a man for 5*l.* a British subject would have the privilege of being exempt unless the debt amounted to 10*l.* you could not arrest an Englishman after the conquest, unless he was indebted 10*l.*

Mr. Nolan.—Surely my lord, that is a local law.

Mr. Justice Grose.—What! do you call it a local law?

Mr. Nolan.—Yes, my lord, I take a clear distinction between local laws, being those laws which either by the nature of their peculiar provisions, or by express enactments, appear intended by the legislature, or by the common law itself, to be confined to the local limits of this kingdom; and those general laws which are framed and fitted to extend to all places under the sovereign's dominion to which his subjects go. I have submitted to the court before, and must submit it again, that if the principle laid down in all the cases be true, namely that our law is to extend, up to a certain degree, to those countries which are discovered, why is it not, upon the same principle, to extend in the same degree to a conquered country? I will put this case for illustration sake, although it is similar to that I have already laboured—Suppose two islands, one inhabited the other not, the one having the most abominable laws that ever disgraced any community, the other having no laws at all, because it had no people; suppose two armies are sent out from this country, one of which takes possession of the first, and the other of the second. By what principle is it that the same king's soldiers and subjects should be entitled to particular privileges in the one place, where they have done nothing but take possession of the soil, and that the other portion of the same people, who after great labour and peril have conquered a country, should be subject to the abominable laws which previously existed there? I feel this argument so strongly, that I do not know how my learned friend can drive me from it. I do not conceive how he can make out that if it extend to one, it must not equally extend to the other, when there is no capitulation. This doctrine has been recognized by the legislature, as well as by a great judicial decision, which I shall cite by-and-by. My lords, by the stat. 11th and 12th Will. 3rd, cap. 12., (which was the first law that was made for the purpose of punishing in this country, governors and other persons, for violating their duty as governors) it is enacted, that "if any governor, lieutenant-governor, deputy governor, or commander in chief of any plantation or colony within his majesty's dominions beyond the seas, shall be guilty of oppressing any of his majesty's subjects beyond the seas, within their respective governments or commands, or shall be guilty

"of any other crime or offence, *contrary to the law of this realm*, or in force within their respective governments or commands, such oppressions crimes and offences shall be inquired of, heard, and determined in his majesty's court of King's-bench here in England," &c. Now, is not this a clear recognition by the legislature that there is a paramount jurisdiction, and that there are some general laws which extend to colonies as well as some that do not?—The subsequent act, under which this gentleman is brought before the Court, recognizes the former statutes, and professes to extend their principles to other cases. But, my lords, the main authority upon which I rely, is that of lord chief justice De Grey, in the case of *Fabrigas v. Mostyn*. Your lordship knows that was an action brought by *Fabrigas*, a native of Minorca, against Mr. Mostyn, the governor, for false imprisonment, and sending him out of the island of Minorca. The island of Minorca was, as the island of Trinidad here is, a conquest from the crown of Spain, without any stipulation with respect to the preservation or continuance of its laws. In that case the jury had found very heavy damages against general Mostyn for having sent the plaintiff out of the island, and upon a motion for a new trial, lord chief justice De Grey said, "he," (that is *Fabrigas*), "was then confined on board a ship, under the idea of a banishment to Carthage. I do believe Mr. Mostyn was led into this, under the old practice of the island of Minorca, by which it was usual to banish: I suppose the old Minorquins thought fit to advise him to this measure. But the governor knew that he could no more imprison him for a twelvemonth, than that he could inflict the torture; yet the torture, as well as banishment, was the old law of Minorca, which fell of course when it came into our possession. Every English governor knew he could not inflict the torture; the constitution of this country put an end to that idea.*"

Now, my lords, here is the opinion of a most able, learned and accomplished judge, decidedly in my favour. The question was, whether the governor could banish an inhabitant (one who was so before it was reduced under our king's dominion) without a trial—certainly a much less important question than if it had been whether he could torture him without trial. My lord, against this opinion will, as I suppose, be cited, as it has formerly been, an authority which does not appear to me to be in point. I mean the case of the union between England and Scotland. The argument that maybe drawn from it is this: the law of torture continued for three years in Scotland after the union, when it was put an end to by act of parliament. If the cases correspond in fact, I must admit this to be one in point, but I conceive there are no two cases more unlike.—The present is a case of conquest,

* 11 Hargr. St. Tr. 185; 20 How. St. Tr. 131.

by which the island was reduced under the dominion of England, and became attached and annexed to the Crown of England; the other was the case of two independent nations, peaceably uniting by mutual stipulation. It would introduce, at all events, the point of distinction that was put in argument, namely, what would be the effect of the stipulation for the preservation of the old laws? For this is the case of a conquest without any such stipulation, the other of an agreement between two independent states. There is another and a more decisive answer to this case, which is, that by the act of Union, the *parliament* preserved the laws of Scotland. Nobody has contended that the legislature might not, if it chose so far to forget what would be its duty, make torture part of the law of Trinidad. My argument is, that it cannot be done by the king's prerogative nor without some act of the legislature. In the case of the union between England and Scotland, the legislature did interfere, and did preserve the laws of Scotland; and if there is any consequence to be deduced from this instance, it is rather the other way, namely, that the people of Scotland were afraid that the laws of Scotland would, without this legislative act, have given way to the laws of the greater state.

My lords, these are the arguments that have occurred to me upon the first part of the case; I shall trouble your lordship much more shortly upon the remaining points.

It has been stated that it is necessary to prove that the defendant ordered the infliction of torture from motives of malice. When the act is clearly illegal, it is unnecessary to prove malice; the law infers it. This is so clear and plain a proposition, that if it were not in deference to the arguments which have been urged on the other side, I should have thought it unnecessary to consume the Court's time by quoting a single authority, or adducing a single argument to support it. The opinion of lord Mansfield, in *Rex v. Woodfall*,* is decidedly in point, there his lordship said, "that all the epithets in the information were formal inferences of law, from the printing and publishing. That no proof of express malice ever was required; and in most cases is impossible to be given. That the verdict finds only what the law infers from the fact. Therefore, after conviction, a defendant may, by affidavit, lessen the degree of his guilt. That where an act, in itself indifferent, if done with a particular intent, becomes criminal, there the intent must be proved and found; but where the act is in itself unlawful (as in this case) the proof of justification, or excuse lies on the defendant; and in failure thereof, the law implies a criminal intent."

But, it may be said that this is a case of libel, and that the law of libel has been altered. I will not enter into the question of libel. Lord Mansfield, as your lordships well

know, was eminent for laying down some general principle to be applied to all cases that came within its range. He was stating this rule as extending not only to cases of libel, but to all illegal acts. The principle has been recognized in numerous other cases.

Thus it is laid down,* that "if a lieutenant, or other, that hath commission of martial authority, in time of peace hang, or otherwise execute any man by colour of martial law, this is murder, for this is against Magna Charta, cap. 29, and is done by such power and strength, as the party cannot defend himself; and here the law implieth malice." So in another case, which is to be found in the same authority† "if the sheriff, or other officer, where he ought to hang the party attainted, according to his judgment and his charge, will, against the law, of his own wrong, burn or behead him, or *e converso*; the law in this case implieth malice in him. Neither can the king by any warrant under the great seal alter the execution, otherwise than the judgment of law doth direct; for it is a maxim in law, non alio modo puniatur quis, quam secundum quod se habeat condemnatio." The case of the Lieutenant, is exactly in point in all respects. There is a judge acting under the king's commission, conceiving that it gave him power to try and execute, in time of peace, yet that by law is murder, for it implies malice. So lord Hale, in the 37 cap. of his Pleas of the Crown; the title is, "Concerning murder by malice implied, presumptive, or malice in law."‡ That great and learned judge thereby appears to have considered, that where the act was illegal, the malice to be implied from thence was not only sufficient, but it was incapable of being rebutted. If to negative positive malice, would exonerate from punishment, though the act were illegal, intoxication might be an excuse, or ignorance a vindication of every crime. In the case of persons holding public situations, it never was doubted or denied, that the illegality of the act was sufficient to warrant an inference of malice, independent of any positive proof. Thus in the *King v. Sainsbury* and another,§ which was an indictment against an alderman of the city of London, for granting ale licences, which had been refused by the justices of the county of Surrey. The justices of the county, claimed a concurrent jurisdiction with the justices of the city. Mr. Alderman Sainsbury exercised this right only for the purpose of trying the question of jurisdiction, and it was argued, that no malice could be implied; but Mr. Justice Ashurst was decidedly of the contrary opinion. He said, "what the law says shall not be done, it becomes illegal to do, and is therefore the subject of an indictment, without the addition of any corrupt motives. And though the want

* 5. Burr. 2666.

* 3 Inst. 52. † 3 Inst. 52.
‡ 1 H. P. C. 455. § 4 T. R. 451.

of corruption may be an answer to an application for an information, which is made to the *extraordinary* jurisdiction of the Court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law." Your lordships know another case where some justices, who had acted under the advice and opinion of a very able and most learned counsel, which was shown to the Court, but the Court said, we cannot take that into consideration: if you are indicted, you are responsible for the act; however honest the advice may have been, still you are responsible for what you have done.* It is laid down by lord Hale, that if a man gives another a certain sort of physic for sport, he is guilty of murder if the man dies. There are many other cases depending upon the same principle, with which it is unnecessary to trouble your lordships. The cases respecting jurors which have been put in opposition to this doctrine, are entirely out of the question, because they are not cases where a judge acts beyond his jurisdiction, which even though he supposes himself to have possessed, he is, notwithstanding, answerable to the law for the illegal assumption of power. *Bushell's case*,† and that of *Hamond v. Howell*,‡ were cases of jurymen acting in discharge of their duty, and do not come within the principle I contend for. At the same time, the case of jurymen is not quite so favourable to my friend's argument as may be supposed, because the most terrible punishments which the law of England ever inflicted, were inflicted upon jurors for finding contrary to the fact, though it was not done corruptly.

Lord *Ellenborough*.—It must certainly be *malò animo*, not a mere mistake.

Mr. *Nolan*.—I hope so, my lord, for the honor of the country. For the same reason, I shall lay aside all the decisions with respect to actions brought against the sheriff. They were brought against the sheriff as not having done his duty at a poll for electing members to serve in parliament, where he was acting clearly within his jurisdiction. Being cases in which the parties were guilty of an error in judgment only, I do not deny, that in order to found an action, you must prove that they did the act maliciously. When considering the question, how far, and to what extent a person acting without jurisdiction, is liable, I should state, that there are three species of courts, with respect to which the law varies very much in this respect. The first are courts of general jurisdiction; the second, courts of limited jurisdiction which are of record; and the third, courts of limited jurisdiction which are not of record, under which last description governor Picton, supposing him to have acted as a judge, falls. I admit no action will lie against judges who

have a general jurisdiction (such as your lordships) for an error of judgment. I will just mention to your lordships, on this head, *Bushell's case*,* and *Miller and Seare*;† but even to this position there is one exception; because in the case of a bill of exceptions, if a judge refuses to sign it, an action lies.

Lord *Ellenborough*.—That is not a mistake of the law, but a refusal to do his duty.

Mr. *Nolan*.—My lord the same doctrine is laid down in *Floyd v. Barker*, 12 Coke 22; but, whatever the law is as to a civil remedy, there is no question that the judges are amenable in parliament, not for error in judgment merely, but for exceeding their jurisdiction. This is laid down in *Hengham's case*, cited by lord Hale‡ and is in 3 Inst. 72: it was the case of an erasure of a record, and it is expressly said by lord Coke that it was done out of pity, and not out of malice. My lords, the same doctrine is laid down in 1 Hawkins§ where it is stated, that if the Court of Common Pleas gives judgment in an appeal of death, though it is not actually murder, it is a high misprision; and the same position is laid down by lord Hale|| These doctrines show this and no more, and I cite them for nothing more.

Lord *Ellenborough*.—I take it for granted you do not admit him to have acted as a judge.

Mr. *Nolan*.—No my lord; and most particularly not as a judge of a superior court.

Lord *Ellenborough*.—Then if you are strong upon that point, these are mere abstract questions.

Mr. *Nolan*.—I have stated these observations much more out of deference to the admirable argument I heard upon a former occasion than from any other motive. All these are cases in which it was held, that even, if a judge of a superior court, exceeds his jurisdiction, he may be answerable for that excess, though it was not maliciously done. That an action will lie in such cases against judges of courts of record of a limited jurisdiction, is laid down in the *Marshalsea case* by lord Coke. So in *Terry v. Huntingdon*.¶ In *Gwinne v. Pool*,** Mr. Justice Powell observes, that an action will lie against the judges of an inferior court of record who exceed their jurisdiction. He takes this distinction; if it arises merely from ignorance of the fact, it shall excuse them; but, if it arises from ignorance of law that shall not excuse them, but they are liable to answer for it. Then, where the proceeding is against a judge of a court, not of record, it is clear that all the circumstances of the case are traversable, which is not so in the case of a judge of a court of

* *Vide antè*, p. 469. † 1 Mod. 119.

‡ 2 Mod. 218,

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* Vaugh. 108. † 2 Sir W. Blackst. 1141.

‡ 1 P. C. 646. § c. 28, s. 4, 5, 6.

|| 1 P. C. 498. ¶ Lutw. 935, 1560.

** Hardr. 480.

record. See Dr. Ballard's case,* and lord Mansfield's judgment in *Fabrigas v. Mostyn*, Cowper 172. Also in the case of *Conner v Sabine*,† where a man who belonged to the artillery train was tried by a court martial and sentenced to 500 lashes, he brought his action against the governor, who had done nothing but confirm the sentence, and he recovered 500*l.* damages, because it was held that the plaintiff, being a driver in the artillery train, was not liable to martial law, and therefore the confirmation was an excess of jurisdiction. I say then *a fortiori*, if a civil recompence lies for the party, an indictment will lie for the injury done. It is a personal trespass, and a direct infraction of the liberty of the subject. It is a violation of the king's commission, and an infringement of Magna Charta. Your lordships know, that in the *Marshalsea* case‡, the main question was, whether an action of assumpsit could be brought in the court of Marshalsea. The question arose upon the jurisdiction of the court, how far they had the power to entertain an action of trespass. Lord Coke was of opinion that they had usurped an authority which was an infringement of the Great Charter. If this be correct in principle, surely it cannot be contended, that where a person assumes a jurisdiction, in contradiction to the power granted by the crown, whose authority he violates by the very act of assumption, and particularly if he acts upon it so as to infringe upon the rights and liberties of his fellow subjects, he is not indictable for such a gross offence. The same law is laid down by lord Mansfield in *Fabrigas v. Mostyn*, Cowper 173, and by Hawkins.§ So is the opinion of lord Holt in the case of *Hall v. Hill*,|| which is decisive upon the subject: "The defendants were judges of a court at Bristol, in which the plaintiff had obtained a verdict, and damages for 28*l.*; on the same day he went to the town clerk, and got his costs taxed, he being the proper officer, and took out a *capias* against the principal, and upon return thereof a *scire facias* against the bail, who, after the return of a second *scire facias*, surrendered the principal, after which, a year's time having elapsed from the verdict, and taxing the costs, that Court granted a new trial. This being complained of to the Court of K. B. a rule was made for an attachment *nisi*." Your lordships see this is a much stronger case, being a rule to attach judges who had acted wrong in granting a new trial.

Mr. Justice Bayley.—They had no power to grant a new trial.

Mr. Nolan.—True, Sir; I merely cite it to show, that excess of jurisdiction is punishable, and that it is punishable even by at-

tachment, which is the strongest of all modes of punishment. I cite the dictum of that great judge lord Holt, to show that excess of jurisdiction may be punished, though it originates in a mere mistake in judgment. But, suppose it was not so in any other case, it must emphatically be so in the case of a person who assumes to act in the dernier resort; because, unless he is answerable in that way, he is answerable in no way at all. So it is laid down by lord Mansfield "Therefore, in every light in which I see the subject, I am of opinion that the action holds *emphatically* against the governor, if it did not hold in case of any other person. If so, he is accountable in this court, or he is accountable no where; for the king in council has no jurisdiction. Complaints made to the king in council tend to remove the governor, or to take from him any commission, which he holds during the pleasure of the crown. But if he is in England, and holds nothing at the pleasure of the crown, they have no jurisdiction to make reparation, by giving damages, or to punish him in any shape for the injury committed. Therefore to lay down in an English court of justice, such a monstrous proposition, as that a governor acting by virtue of letters patent under the great seal, is accountable only to God, and his own conscience; that he is absolutely despotic, and can spoil, plunder, and affect his majesty's subjects both in their liberty and property, with impunity, is a doctrine that cannot be maintained."*

My lords, it surely cannot be contended that there was not an excess of jurisdiction in this instance; I shall therefore wait till I hear my learned friend, before I argue that point. If the law of torture had ceased before general Picton ordered it to be inflicted, that order was an excess of jurisdiction. I will admit to my learned friend, that if general Picton had a power by law to inflict the punishment of torture in any similar proceeding, a mere mistake in judgment in the application or misapplication of it, would come within the indemnity which a judge might fairly claim. But, if a judge creates a punishment, or if a governor constitutes himself a judge and inflicts either a known or an unknown punishment, I shall contend, in case it should become necessary in reply, that it is an excess of jurisdiction, for which he is liable to punishment.

The next question will be, whether the defendant, supposing general Picton to be authorized to inflict torture in some cases, by the law of the island, must not show that he conformed strictly to the law, by which it was authorized, and whether, if he is unable to do so, he is not answerable for all the acts of the inferior judge, at least up to the time the punishment was inflicted by his order? or, in other words, whether the governor must not justify himself under the laws of Spain

* 1 Hargr. St. Tr. 121; 1 How. St. Tr. 1127.

† Cited by lord Mansfield in *Mostyn* and *Fabrigas*, Cowp. 175. ‡ 10 Co. 68.

§ P. C. book 2, cap. 22, s. 26. || 7 Mod. 84.

* Cowp. 175.

in the same manner as the inferior judge must, and show that he has taken care that the law has been correctly fulfilled? I find that this Court always entertains the question whether Courts of limited jurisdiction have strictly conformed to the authority under which they are empowered to act. That is laid down by lord Mansfield in *Fabrigas and Mostyn*, and is the effect of *Conner v. Sabine*. In that last case the governor did nothing but confirm the judgment of the Court, and yet he was made answerable for this as an exceeding of his jurisdiction: this seems a case in point, as far as it goes. That general Picton did not conform to the Spanish law seems clear, because no defensor was appointed, which, according to that law should have been done. The special verdict has found, that by the Spanish law torture could not be inflicted for five days after it was ordered. And it is also found, that it was governor Picton's duty to limit the time, place, and circumstances of the torture, instead of which, he gives a general order, and says "apply the torture," leaving every thing else to the discretion of the judge below. He is therefore responsible for every act of that judge, done under that order, and for no defensor being appointed.

Mr. Justice *Bayley*.—If by the law of Spain torture could not be carried into effect till after the expiration of five days, and he gives a general order, is he answerable for any thing that takes place between the issuing of the order and the expiration of five days?

Mr. *Nolan*.—My lord, I conceive he is, because he should have defined the time and manner when it was to be inflicted. It is not unlike the case of commissioners of bankrupts. If they think proper to order their minister to do any particular act, and he conforms to the letter of their order, if they have not limited him, as they ought to have done, they are responsible for all the consequences of his conduct. It is, in fact, their act as much as it is his.

Lord *Ellenborough*.—"Apply the torture" must mean apply the torture according to the law of the island in such cases.

Mr. *Nolan*.—Your lordship sees that torture was applied under the authority of general Picton's order, and—

Lord *Ellenborough*.—As to the right of ordering it at all, your argument is deserving of considerable attention; but as to ordering it within the time, this would be requiring more than is done in the execution of any ministerial order from any court whatever.

Mr. *Nolan*.—My lord, it is sufficient for me that that torture was inflicted in consequence of a general order, which was by reason of that generality illegal.

Mr. Justice *Bayley*.—You had better apply yourself to that point, because he may not be

liable at all for any thing that Begorrat had done within the five days.

Mr. *Nolan*.—It is found that by virtue of the order given by the defendant, Begorrat did torture this girl; upon that point there is no doubt; but whether the order was given and the punishment inflicted according to the formalities of the Spanish law, is another thing.

Mr. Justice *Bayley*.—Suppose it was expressed in words, that at the expiration of five days he should inflict the torture, that upon the very same day (and consequently before the expiration of the five days) Begorrat had inflicted torture, would general Picton then have been responsible?

Mr. *Nolan*.—My lord, I conceive it would come strictly within what I last stated. If the order was illegal, and issued improperly, then Begorrat became the minister of the party, giving such improper order, and the illegal principal is liable for the illegal acts of his agent. It is like the case of a distress, prior to the statute.

Lord *Ellenborough*.—The mal-execution of a ministerial order, improper in its terms cannot make the person ordering responsible.

Mr. *Nolan*.—According to the cases, the party executing must conform to the order given him, although irregular. If he even may do so, the principal must be answerable for his acts. Here the order limits no time as by the Spanish law it ought to have done. But it is not necessary to insist upon this point. He is answerable for the torture, if inflicted under an order he had no power to give, and he never could be permitted to say, "I am not responsible because the punishment was inflicted two days before I had intended it should, the precipitate infliction have occurred from my own neglect in omitting to specify the time."

Mr. Justice *Bayley*.—In the five days he might have revoked his order.

Mr. *Nolan*.—It is found expressly by the verdict that it was applied under the order.

Lord *Ellenborough*.—If he had no power to do it at all he might be responsible.

Mr. *Nolan*.—That is one of the points I humbly submit to the Court, I put it that the actual infliction of torture was by virtue of an illegal extrajudicial order; and therefore he who gave it is answerable to the extent of having illegally inflicted torture, though he may not possibly be answerable for the illegal mode and the extent in which it was applied.

Mr. Justice *Grose*.—Suppose an order of execution for murder on the day fixed by the statute, and the executioner executes the man the day before, according to your argument the judge would be answerable.

Mr. *Nolan*.—No, my lord, undoubtedly not,

because there the judge, in the execution of his duty, had done right; but though the judge is not answerable for such an untimely execution of the order by his minister, yet he might be answerable and punishable in a case resembling the present one, viz. for issuing that general order if it were his duty to prescribe and limit the mode and time of punishment in his order, and if by reason of such omission, the punishment was prematurely inflicted.

Lord *Ellenborough*.—If you say he had no authority to issue the order at all, then every thing that is done under it is wrong, and one understands you; but supposing the order to be legal, and that he might order the application of the torture, then the fact of the order being executed by the officer earlier than he ought to have executed it, is an error of the officer, not of the judge.

Mr. *Nolan*.—My lord, I have stated: first, that it is illegal because there was no authority to inflict the torture, and second, that even if he had jurisdiction his order would be illegal, because it did not conform, in terms and substance, to those forms which the Spanish law required. The question which your lordships have put to me is beside my argument, for it assumes that the order is formally and substantially correct according to the Spanish law, whereas my argument is, that it is quite otherwise.

The next and last point upon which I shall trouble your lordships is, that general Picton had, under the king's commission, no power to issue the order for torture at all. Your lordships will see what is found with respect to this point, which will turn materially upon the construction of the king's commission.

Lord *Ellenborough*.—There are two things; there is the commission granted to Mr. Nihell, as chief judge, by sir Ralph Abercrombie, which directs, that in criminal cases, the appeal should be to the governor, and then there are his own instructions.

Mr. *Nolan*.—Yes, my lord, the special verdict states, that there were three courts in the island which had co-equal jurisdiction; that they were entirely separate, having no interference with each other, and that no appeal lay from one to the other, or to the governor from any of them. The jury further find that the Court of the governor was one of those courts of co-ordinate jurisdiction. After the surrender of the island, Mr. Nihell is appointed by sir Ralph Abercrombie to be its judge, and under the instructions he obtains jurisdiction over criminal cases; and so far as it was in the power of the commander in chief to make that regulation, an appeal lay from his decisions to the governor in criminal matters. But, my lords, by those instructions no appellate right was given, when any case was before any other court; if, indeed, any other court can be supposed to exist, except that of the chief justice after its creation; for doubts may be entertained whether taking these instructions to have sufficient validity to con-

stitute a court the ancient tribunals were not thereby taken away.

Lord *Ellenborough*.—What are you stating? Do you mean the instructions to Mr. Nihell, or the king's instructions?

Mr. *Nolan*.—I am now talking of the instructions to Mr. Nihell. But the main argument turns upon the king's instructions. By the instructions to Mr. Nihell, he was created chief justice, and had jurisdiction over criminal matters, and an appeal was given to the governor from his decisions. It is a separate question whether this court of the chief justice existed after the instructions given by the crown to general Picton, or whether those of sir Ralph Abercrombie were not thereby altogether rescinded. But though it be assumed as a fact, that they continued to exist, yet they did not give the defendant an appellate jurisdiction in all cases and from all tribunals whatever, but only an appellate jurisdiction in criminal cases, which had been originally instituted before Mr. Nihell; they give him no jurisdiction over the proceedings in another court, distinct from that of the chief justice. None over the court of the alcalde of the first election. Your lordships have a jurisdiction by writ of error over the court of Common Pleas, but you have no such jurisdiction over the court of Exchequer.

Mr. Justice *Bayley*.—Nihell's court did not act at all upon this subject.

Mr. *Nolan*.—No, my lord, we may in truth put every thing respecting him out of the question. The case turns entirely upon his majesty's instructions, which are dated 1st June 1801, they are found to be received and acted upon by general Picton, prior to inflicting the torture. The 5th article is, "It is our will and pleasure, that, for the present, the temporary administration of the island should, as nearly as circumstances will permit, be exercised by you according to the terms of the capitulation hereunto annexed, in conformity to the ancient laws and institutions that subsisted within the same, previous to the surrender of the said island to us, subject to such directions as you shall now or hereafter receive from us, under our signet or sign manual, or by our order in our privy council, to such sudden and unforeseen emergencies as may render a departure therefrom absolutely necessary and unavoidable, and which you are immediately to represent to one of our principal secretaries of state for our information. But it is nevertheless our special command, that all the powers of the executive government within the said island, as well civil as military, shall be vested in you our governor, or in the person having the government of the said island for the time being, and that such powers as were heretofore exercised by any person or persons separately, or in conjunction with the

"governor of the said island, shall belong solely to you our governor, or to the person having the government of the said island for the time being."

My lords, this clearly refers only to the executive powers of government. His majesty herestates what powers he means to give to the governor as his personal representative, touching the executive functions of the crown; that whether separately or conjointly exercised previous to the surrender of the island, they should belong to the governor alone. Next comes a qualification which shows that they refer to the executive part of the government because it says, "And it is our will and pleasure, that all such public acts and judicial proceedings, which before the surrender of the said island to us, were in the name of his Catholic majesty, shall henceforth be done, issued, and performed in our name." Then the 7th article is, "It is our will and pleasure, that, for the present, and until our further pleasure shall be signified, the same courts of jurisdiction which subsisted in the said island previous to the surrender thereof to us, shall for the present, be continued in the exercise of all the judicial powers belonging to them in criminal and civil cases, and that they shall proceed according to the laws by which the said island was then governed; and that such judicial powers as previous to the surrender of the said island to us were exercised by the Spanish governor, shall be exercised by you, our governor, in like manner as the same were exercised previous to the surrender of the said island." So that your lordships see that this 7th article refers particularly to the judicial power given to the governor. It is found by the special verdict, that those judicial powers which the governor had prior to the surrender of the island were not powers in the nature of an appellate jurisdiction, but those of an original court. It is also found, that general Picton had not the cognizance of this cause in his court as governor, but that it was before another tribunal in the island, namely, the court of the alcalde of the first election. The consequence is, that his interference was *coram non judice*, the jurisdiction of the two courts being co-ordinate. Your lordships sitting here, could not take notice of an interlocutory order of the court of Common Pleas, nor make any order thereupon. His majesty's instructions specifically and expressly give general Picton no other judicial power than the Spanish governor had, and the Spanish governor had no power to interfere in a cause which was before another jurisdiction.

But it may be argued, that this was a matter of necessity, because there was no power of inflicting any specific punishment by the law of the island without an appeal to the audience of Caraccas. The cases of appeal to the Caraccas were cases of punishment of a very peculiar nature—torture, death, whipping by the common hangman, which ren-

ders a man for ever infamous, and other heavy punishments. But I may, for argument's sake, take it for granted, that an appeal lay in all cases to the audience of Caraccas. My learned friend must then contend, that by taking away the court of appeal, the appellate jurisdiction devolves upon another court without any express authority from the crown. Your lordships have a jurisdiction as a court of error over the court of Common Pleas, but if that jurisdiction were taken away, can it be said that *ex necessitate rei* the court of chancery or some other court would have it? The jurisdiction of the court of audience is abolished, does it therefore follow that some other person is to have its judicial functions? Is it a justification for any man to say, as a matter of necessity in civil government, I undertook to execute a punishment in lieu of another person, by virtue of an authority which had not devolved upon me, and for which the king's commission gave me no warrant whatever?

Mr. Justice Bayley.—The king's commission vests in him the complete executive power.

Mr. Nolan.—Not, my lord, as it respects the point before us; for it is found that this order must be given by the judge, or it cannot be made at all.

Mr. Justice Bayley.—The judge must be present.

Mr. Nolan.—This is found, that the governor had no power to do such a thing of himself in the island.

Mr. Justice Le Blanc.—No, not as governor.

Mr. Justice Bayley.—The Spanish governor had not, because the audience of Caraccas, perhaps, were an executive power over him, they were to see the proceedings and confirm the sentence.

Mr. Nolan.—They were a court of appeal, and only a court of appeal, which my learned friend would not deny, because it is found by the special verdict.

Mr. Justice Bayley.—I do not take the audience of Caraccas to be a court of appeal, but a court to confirm or annul the sentence.

Mr. Justice Le Blanc.—The torture was not to be inflicted till the order was confirmed by the Court of the Caraccas.

Mr. Harrison.—[reads from special verdict]
"From which court (the audience of Caraccas),
"an appeal lay in such cases to the king of
"Spain and council of the Indies at Madrid;
"and that previous to, and up to the time of
"surrendering the island as aforesaid, it was
"necessary by law, in all cases in which
"any sentence, whether interlocutory or final,
"was pronounced by any of the aforesaid
"courts, in the island of Trinidad, by which
"any party accused was adjudged to the in-
"fliction of corporal punishment, such as
"death, or whipping by the common hang-
"man, or of torture, that such sentence (al-
"though not appealed against) could not, ac-

“ording to the law then existing in the said
“island of Trinidad, be carried into execution
“until that sentence had been transmitted to
“the superior tribunal of the royal audience
“of the Caraccas, for its confirmation or re-
“jection.”

Mr. Nolan.—Your lordships see, that it is called the “*superior tribunal*.” The present case has no resemblance to that of an executive power, carrying into execution, or approving a sentence given by a competent tribunal; it is the governor interfering in the midst of the proceeding, and *quâ* judge doing a judicial act in ordering what shall be done when the original judge had made no order. It is not by virtue of his executive power, it is as a judge that he interferes.

Mr. Justice Bayley.—The judge of the place applies to him and tells him it is proper; and therefore he does not act of his own mere motion.

Lord Ellenborough.—Supposing you succeed in showing he had no judicial power, has he not, under the king’s instructions, the executive power? was he not authorized, by those instructions, to confirm this sentence?

Mr. Nolan.—I conceive not; he has a judicial power expressly by those instructions; and it is absurd to suppose that he had the further power of confirming his own sentence.

Lord Ellenborough.—I wish you to address your attention to that, because it is the most pressing part of the argument.

Mr. Nolan.—Where the crown gives by commission to the subject an express limited power, it cannot be extended but by some other act of the crown.

Lord Ellenborough.—Assuming, for the present, that you have succeeded in establishing that he had no judicial power beyond what the governor had before, and that the audience of Caraccas could not be appealed to; does not the power of the audience of Caraccas become vested in him? is there not, in those instructions, a direction that he shall exercise all the powers of the executive government which had been exercised before? and is not the confirmation of the sentence a branch of the executive power exercised in this country?

Mr. Nolan.—This is not a confirmation of a sentence of the court below, but an original order.

Lord Ellenborough.—Is it not what the audience of Caraccas did before? and did the audience of Caraccas exercise it as a judicial body, or as a part of the executive government? I am not giving any opinion now; but I wish you to apply yourself to that.

Mr. Nolan.—There is no doubt, that the Court of the audience of Caraccas had nothing but an appellate jurisdiction, or, at least, acted in such cases as a judicial body.

Lord Ellenborough.—Of whom did they

consist? were they persons composing the executive government, or were they a judicial body?

Mr. Nolan.—They are a judicial body.

Mr. Stephen.—They were both; they had both judicial and executive authority.

Mr. Nolan.—The principal part of the Court consisted of judges, who must be persons qualified and conversant in the law. The appeal lay from their decisions to the king in council. I am sure the audience of Caraccas was not the executive government. The viceroy of the Caraccas was the executive governor; the appellate jurisdiction called the Royal Audience of Caraccas, was the council of which the viceroy made one. In military cases he had much greater jurisdiction; but in civil, he was no more than one of the judges; therefore the jurisdiction of the audience of the Caraccas, so far as respected the island of Trinidad, was, in effect, strictly appellate. What shows this decisively is, that they never attempted to execute a sentence, but sent it back again to the island.

Lord Ellenborough.—But still, were they not the executive government, acting upon such a subject as the privy council here act, and where legal characters always attend? I have myself the honour to attend as a privy councillor, but I do not attend as a judge; they act as a part of the executive government; the lord chancellor and other persons invested with legal characters appear there as the council of his majesty, to advise him in the administration of the executive government.

Mr. Nolan.—Yes, my lord. If one of your lordships sitting in a court of Oyer and Terminer, was to entertain a doubt upon a case, and was to reserve the point, and it were possible that the lords of the privy council were to sit to decide the question, in a particular way, that would be a case in point. But—

Lord Ellenborough.—That never could be done after the judicial body have done its duty, and are *functi officiis*; it is referred to the privy council to ratify or mitigate particular penal judgments; and whether they do ratify them or mitigate them, do they do it in a judicial character, or as a branch of the executive government? though many other topics are extremely interesting, this seems to me to press the most.

Mr. Nolan.—I take it for granted, the executive power had authority to put in force any sentence the inferior court should pronounce; but that would not give that power a right to pronounce a sentence, instead of putting one in force.

Mr. Justice Bayley.—It is rather to allow it to be put in force.

Mr. Nolan.—Will your lordship permit me to observe, that if a judgment was pronounced by Begorrat, which the privy council could have advised his majesty to put in execution, general Picton might have a similar power of

doing so? but, I say, the privy council would have no right to pronounce a judgment in any case like this.

As it is found by the verdict, the court below was to pronounce the sentence, and then that sentence was to be transmitted to what is expressly found to be the Court of the royal audience of the Caraccas; and the language of the special verdict is, that such sentence could not be carried into execution until it had been thus transmitted to the superior tribunal of the royal audience of Caraccas, for its confirmation or rejection. So that your lordships see, it is, in all its parts and forms, a judicial act. The court below pronounced the original judgment; and the court above had a power, in all cases, of confirming or rejecting it; and then it was referred back to the executive government for execution. Now here is directly the reverse of such a case, for Begorrat did not pronounce the sentence.

Mr. Justice *Le Blanc*.—No, instead of pronouncing it, he gives his opinion what ought to be done.

Mr. *Nolan*.—He goes to general Picton to obtain power to inflict torture, who makes his order accordingly; that is not merely giving his opinion nor carrying into effect the judgment of another court, but passing his own.

Lord *Ellenborough*.—The judgment of the Court is liable to an appeal to the audience of the Caraccas, in an interlocutory stage of the proceedings; for the purpose of inflicting this torture, they applied to general Picton, considering him, under this commission, as standing in the place of the audience of Caraccas, not to confirm the judgment, but upon an interlocutory proceeding; I wish you to consider the instructions, and see if it is not a branch of the executive power: that presses upon me more than any thing.

Mr. *Nolan*.—I take it, that all interlocutory proceedings in a cause, must be pronounced under a judicial, and not an executive function.

Lord *Ellenborough*.—The torture was not to be inflicted without such sanction; but the question is (and that depends upon the law of the particular place), whether it is an executive or judicial act.

Mr. *Nolan*.—There is not the least question upon the fact. I admit I am bound by the special verdict; but there is not a question that it is thereby found, that the royal audience of the Caraccas acted as a judicial body, and not as an executive power.

Lord *Ellenborough*.—We hear of the government of the audience of Caraccas, but by whom it is executed we are not informed.

Mr. *Nolan*.—By the viceroy, as to the executive part; and as to the judicial part, by the

audience of Caraccas. I should say, in this country, that any sentence pronounced preceding the final judgment, was a judicial act of some judge in the cause; but that, as soon as final judgment was pronounced, their functions cease, and the carrying the judgment into execution, became the act of the executive power. Here it is found, that Begorrat having doubts respecting his power, pending a cause, to inflict torture, applies to the governor to determine, as may appear to him just; and that the governor having perused and considered the proceedings, directed the notary to record among those proceedings, so as to make it part thereof, the order, "Apply the torture," &c. It is altogether a judicial act, and, as such, is recorded in the judicial proceedings. Besides, the defendant's counsel have, throughout the whole of the prosecution, asserted the defendant to have acted as a judge, and relied upon that very fact as a defence for him, and claimed protection for him as such, from the rules and principles of law, which refer to the case and conduct of judges.

Mr. Justice *Grose*.—That is my doubt, whether it may be considered like the case of our privy council, ordering persons to be executed after trial and sentence pronounced.

Mr. *Nolan*.—The king and council, who advise upon the execution of the sentence, do not order any thing to alter the sentence. In fact, the privy council have no jurisdiction over the matter. It is in his majesty who has it, and he cannot alter judicial proceedings. The king puts the sentence in execution, and resorts to his privy council for advice, how far he may extend his royal mercy, or is compelled, in duty to his subjects, to put it in force.

Mr. Justice *Bayley*.—Then that introduces another point, whether, in what he has done, he has complied with the necessary form: the judge gives his opinion that the torture ought to be inflicted, you say he has not given it as an order, but an opinion; and what general Picton does is to confirm that sentence.

Mr. *Nolan*.—With great deference, my lord, that does not alter but strengthens my observation. Supposing it was the duty of the judge to pronounce the order, he says, I have no authority to pronounce it, you the governor must pronounce it; and then the executive power assumes the function of the judge, and pronounces a judicial order in a judicial case. He either has authority to do this, and then it must be by virtue of judicial powers, or he has no authority, except to assent to a judicial order regularly and formally pronounced, and here having assented to the application of torture without such an order, that would be not less illegal and punishable than he is upon my original supposition. The privy council have

no power over a common law judgment; it is the king. The form is in the appendix in Blackstone's Commentaries: "It is his majesty's command that execution of the said sentence upon them, the said Charles King and Mary Smith, be respited, until his majesty's pleasure touching them be further known." It is entirely his majesty's act; the privy council have nothing to do with it: his majesty asks their advice how far to extend his royal mercy with respect to the execution of the sentence.

Lord *Ellenborough*.—He varies the sentence, that is clearly a part of the executive power.

Mr. *Nolan*.—My lord, I speak with the greatest deference, upon the authority of lord Coke, that the crown cannot alter the sentence of the law.

Lord *Ellenborough*.—By what authority does the crown exercise a right to change the punishment? In many instances the king has changed the punishment; in high-treason, by law, the punishment is hanging; in the case of lord Lovat, the sentence was changed.

Mr. *Nolan*.—With submission, the king does not change it, in cases of high-treason the party is to be beheaded only.

Lord *Ellenborough*.—No, not so. I have had the misfortune to pronounce that sentence, which is, that the party shall be hanged by the neck, but not till he be dead, together with many horrible circumstances.*

Mr. *Nolan*.—After that the head is to be severed from the body; the king therefore does not substitute a new punishment; he only remits a part of the original judgment, namely, every thing but the beheading. In the case of lord Ferrers, the point was very much disputed, and that is an authority for me; he was hanged. The prerogative of remitting part was at one time much doubted.

Lord *Ellenborough*.—That was a punishment for felony, but in the case of high-treason there are certain superadded severities. I wish we had had more information with respect to the constitution of the audience of Caraccas; are they called the Audience of Caraccas for the purposes of government, or only for judicial purposes?

Mr. *Nolan*.—Only for judicial purposes. I have no objection, if your lordship has the least doubt upon that point, that the special verdict be amended according to the fact.

Mr. Justice *Le Blanc*.—They will not agree to that, and therefore we cannot do it.

Lord *Ellenborough*.—In the view I take of it at this moment, the judgment of the Court may turn upon that point.

Mr. Justice *Le Blanc*.—But you do not agree about that.

Mr. *Nolan*.—I believe it was understood by us both, to save his lordship's time at Nisi Prius, that all the Spanish laws which were in this country should be considered as given in evidence, and if there was any doubt, reference should be had to a competent tribunal to determine how the fact was. I believe this is in conformity to the usual practice; I cannot say, I think it is wanted in the present case, to insure the conviction.

Mr. Justice *Le Blanc*.—Will it appear by any book in your possession?

Mr. *Garrow*.—Yes, my lord; I think it will appear. There was but one instance produced upon the return to the Mandamus in which torture had been inflicted. I take it that the audience of Caraccas had no more authority to originate an order to be executed in the Island of Trinidad, than your lordship, previous to the cession. The order that the court originally pronounced, could not be executed till it was sent to the audience of Caraccas; then it was sent back, and the executive power in the Island executed it.

Mr. *Nolan*.—If your lordship has any doubt about it, that point may be reserved, to see how the fact was.

Mr. Justice *Le Blanc*.—But that will not answer my lord's doubt.

Mr. Justice *Bayley*.—That makes it almost a mere matter of form.

Lord *Ellenborough*.—It is not exactly matter of form, it seems to be important as to the authority; when the question becomes so nice as this, whether a man who was so near being right, be legally guilty? the case having been purged of malice, it will be necessary to see whether his conduct was strictly conformable to the laws, and that will very much depend upon whether it was an act of the executive government, for if it was, the probability is that he was correct. I should wish to have further information whether the audience of Caraccas is the executive government.

Mr. *Stephen*.—My lord, I am not at this moment able to recollect any part of the evidence upon the trial that would answer that question. With regard to the fact, however, as it has been stated by Mr. *Garrow*, that this court of the royal audience of Caraccas had only a judicial character, and had no original power, I must beg leave to deny, from a case that came within my own knowledge, a case that came from this very Island, and in the instance of this very defendant; namely, the case of Barry and Dawson, in the year 1801. There had been an appeal from the decree of the Spanish governor of Trinidad, who had dispossessed the plaintiff of his property,

* Now altered by Statute 54 Geo. III. c. 146.

and put a creditor in possession; Dawson the creditor, was brought by appeal before the royal audience of Caraccas, who certainly had a judicial right, though I believe at the same time possessing a political character; but by the royal audience of Caraccas, a decree was pronounced upon that appeal, affirming the judgment of the Spanish governor Chacon; the party dispossessed appealed to the council at Madrid, which is the court of appeal in the last resort from decisions in the Spanish colonies, and there there was a sentence reversing both the former sentences, but referring to the audience of Caraccas, and addressed, as well as my memory will serve me, to the viceroy, directing them, upon Barry, the appellant, giving security to the royal audience of Caraccas, that they should reinstate him in the estate of which he had been dispossessed in Trinidad: this sentence of the council was antecedent to the conquest of the Island. The appellant (Barry) applied to the royal audience of Caraccas early enough. The conquest having intervened, the course was that prescribed by the royal decree, that he should give security in the court of the royal audience of Caraccas, and then having certainly complied with that request, he came over with their authority to be restored to the estate; upon his presenting that order to governor Picton, he very naturally said, "This is addressed to the royal audience of Caraccas, I have nothing to do with it." Upon which Barry petitioned the privy council here, and their lordships considered it to be (the audience of the Caraccas being *ex necessitate* possessed of no authority, political or civil, and this having been prior to the conquest), in justice, a decree of which the party was entitled to have the benefit, and that general Picton was the person to execute that which, by the form of the decree, should have been executed by the royal audience of Caraccas, and an order was made upon general Picton to execute it. It came a second time before them, because he in consequence of the parties having permitted the rents and profits to be received, had directed some accounts, in order to ascertain what the security ought to be, and then Barry being put in possession, Dawson applied to their lordships at the cockpit, stating, that the governor had exceeded this order, and their lordships were of opinion that he was strictly and literally to carry the order into effect. My learned friend Mr. Dallas and myself were both in it, and therefore as far as that authority goes, I apprehend my learned friend, Mr. Garrow, was incorrect in what he stated with respect to the power of the audience of Caraccas.

Mr. Garrow.—The Court will do me the justice to say, I did not assert it with any positiveness.

Mr. Nolan.—That case does not appear to me to touch the question before the Court; it was
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an appeal from the audience of Caraccas, the council sent back their sentence to the audience of Caraccas, with an order to execute it by the proper officer. That was a judicial act, and nothing more than what occurs in the case of a Writ of Error brought into this court, from the court of Common Pleas, and then carried to the House of Lords, from whence it would not go back to the court of Common Pleas, it would come here, to be enforced, but that would not make it less your lordship's judicial act ultimately to be carried into effect by the executive department.

Lord Ellenborough.—It is done in the course of administering justice, but we wish to know whether it was a judicial or a political body, to enable us to construe the instructions of general Picton correctly: this was before the proceedings that Mr. Stephen has alluded to, because the instructions are dated the 1st of June 1801.

Mr. Nolan.—My lord, I shall now conclude with what I have had the honor of submitting so often to your lordships, that governor Picton must be taken to have assumed the authority of a judge, and to have acted under that assumption. I go on further to state, that if there is any doubt as to the fact, I ought to acquiesce in its being settled by the instructions and proofs, if any information can be obtained respecting it.

Lord Ellenborough.—I do not apprehend you had much evidence upon that either the first or the second time.

Mr. Dallas.—I do not recollect any paper in which the constitution appears, though I do not state that there is not.

Mr. Nolan.—In agreeing to the special verdict, I think, it was made a part of the terms that all the laws of the country should be considered as given in evidence, though they were not in fact so given.

Lord Ellenborough.—This must of course stand over till next term, when we shall hear Mr. Stephen, and if any alterations shall have been made in the mean time, you will be so good as introduce them into the special verdict. If you should not be agreed, we must proceed upon the special verdict as it stands; we cannot proceed further in it to-day.

Mr. Nolan.—My lord, any variation in that fact may very much alter the observations I may have to make upon this point.

Lord Ellenborough.—You will have your opportunity hereafter in reply.

On Wednesday and Thursday the 16th and 17th days of May 1810, the Special Verdict
3 O

was argued by Mr. Stephen* for the defendant. He adopted the same course of argument which Mr. Dallas had taken previously,† and contended that, by the laws of Trinidad, sentences of the court of the alcalde imposing corporal punishments, were invalid, unless confirmed by the royal audience of the Caraccas; that at the cession, the authority of the royal audience of the Caraccas necessarily ceased; that in consequence, the sentences of the alcaides must then either have become final or subject to a new and different court of appeal; that it had never been contended that the sentences of the alcaides became final in consequence of this event; that, general Picton having been directed to take upon himself the civil administration of the island, and to adhere as closely as possible to the former laws, the appellate jurisdiction must either have devolved upon him, or it must have rested with his majesty in council; that to have applied to the king in council for a confirmation of every sentence of corporal punishment in criminal cases, would be most inconvenient, and never could have been intended; and that therefore the powers of the royal audience of Caraccas were vested in general Picton, and consequently he had done nothing illegal in executing them.

COURT OF KING'S BENCH,

June 25th 1810.

REPLY.

Mr. Nolan.—My lords, my learned friend, Mr. Stephen, confined his argument to three questions.

By this arrangement he has conceded one of the points which I had submitted to the Court, namely, that no other person, except (as he still asserts) one acting in a judicial character, who commits an act clearly illegal, can rely upon the want of *personal malice* as a justification. This point was not originally submitted by me to the consideration of the Court, for I never entertained a doubt upon it, and would have assumed it as incontrovertible. But being made by my friends on the other side in another stage of the cause, I thought it my duty to combat their doubts as not knowing whether they would be subsequently relied on in argument, or finally abandoned.

Mr. Stephen has likewise omitted to notice

* The short-hand writer's notes of this argument have been lost, and I much regret that I have not been able to present the reader with a more full account of it than that which is given in the text.

† See his argument in support of the rule for a new trial, *antè*, p. 756, and his address to the jury on the second trial, *antè*, p. 818.

another point which I made, namely, whether a person acting as a judge of a superior court is personally answerable for any irregularities in his judgment, originating from the non-observance of some formalities prescribed by Spanish law.

My lords, as Mr. Stephen has stated nothing in answer to my argument, I feel it would exceed the limits of a reply to urge any thing in its support. Indeed, I think I am in candour bound to confess, in this criminal prosecution, that I should have many difficulties to struggle with if I were to labour to maintain it. I have further to observe that a point which seemed to agitate the Court when I had the honour of last addressing it upon the present subject, namely, whether governor Picton in giving this order for applying the torture had not acted in his executive, and not in a judicial capacity has been abandoned by him as untenable. I shall, therefore, consider this case as resolving itself into those three points, which have been considered by Mr. Stephen.

The first point is, that torture was part of the law of the island of Trinidad as well before as after the conquest. This, in fact, meets the proposition I had originally the honour of submitting to the Court, and involves the consideration of all the arguments that I urged in its support. Mr. Stephen founded his argument on the authority of the case of *Campbell v. Hall*,* and he stated to your lordships that the doctrine there laid down was so clear, and the law so fully settled, that he considered that counsel ought not to be permitted to argue in contradiction of that case.

My lords, this assumes that I intended to argue down and controvert altogether lord Mansfield's proposition as stated in the 5th resolution of that case. This I never intended. My object was, to explain and limit its meaning, so as to reconcile the doctrine with legal principles and antecedent authorities. For this purpose I mean to contend that Mr. Stephen has carried the position of the learned judge much farther and understood it in a much more extended sense than that which he had designed his words to convey. That Mr. Stephen has done so, I trust I shall be able to satisfy your lordships out of the report itself, as well as from those decided cases, which I stated on a former occasion. The 5th proposition* is thus expressed: "The laws of a conquered country continue in force until they are altered by the conqueror; the absurd exception mentioned in Calvin's case shows the universality and antiquity of the maxim: for that distinction could not exist before the Christian æra, and, in all probability, arose from the mad enthusiasm of the Croisades."

It is my duty and my privilege to insist that the learned judge's reasoning upon lord Coke's instance, is by no means conclusive; for it might properly furnish an example of a sound principle of exception, although the

* Cowp. 204. † Cowp. 209.

Christian religion had not existed from all antiquity. But omitting this and other observations which occur upon that proposition, it must appear, by comparing it with the 6th, that the latter is beyond all question a limitation of the former. What is stated by the noble lord afterwards in that judgment, and which was referred to by Mr. Stephen himself, is decisive that such was his meaning. But, my learned friend stated, that this proposition never was questioned, and that there was no *dictum* to the contrary in the books. So far is this assertion from being correct, that it is in opposition to three or four subsequent decisions; and instead of there being no *dictum* to the contrary, with the exception of lord Coke's observation in Calvin's case which I contend admits of limitation, every *dictum* in the books is in direct repugnance to that doctrine, in the sense in which my friend understands it. Thus in *Blanchard v. Galdy* (which I cited from 2 Salk. 411), it was laid down by the judges expressly, among other things, "That in the case of an infidel country, their laws do not entirely cease by conquest, but only such of them as are against the law of God; and that in such cases, where the laws are rejected or silent, the conquered country shall be governed according to the rule of national equity." And in 2 P. Williams 75 (decided, I believe, when lord Mansfield was at the bar), this rule is laid down in the most express and explicit terms; and we must suppose that the learned judge was aware of the words I am now about to read.

"Where the king of England conquers a country, it is a different consideration, for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people, in consequence of which he may impose upon them what laws he pleases.

"But, 3rdly, until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place, unless where these are contrary to our religion or enact any thing that is *malum in se* or are silent: for in all such cases the laws of the conquering country shall prevail."*

Now, my lords, here is a position, here is a *dictum* of very great authority limiting the 5th proposition laid down by lord Mansfield; and if his lordship meant to make that proposition as wide as Mr. Stephen contended, my friend should not have said that there was no authority nor *dictum* the contrary way; he must have known perfectly well that all the *dicta* and all the authorities cited were repugnant to such a proposition. I take the liberty of referring to the rule laid down by that noble lord in his 6th proposition, because what fell from one of your lordships in the last argument, went decisively to show that there is no distinction in principle, between continuing laws and creating laws.

Lord Mansfield in his 6th and last resolu-

tion says, "if the king (and when I say the king, I always mean the king without the concurrence of parliament) has a power to alter the old, and to introduce new laws in a conquered country; this legislation being subordinate (that is subordinate to his own authority in parliament), he cannot make any new change contrary to fundamental principles—he cannot exempt an inhabitant from that particular dominion, as for instance from the laws of trade, or from the power of parliament, or give him privilege exclusive of his other subjects, and so in many other instances, which might be put."

My learned friend's interpretation of this exception is, that it refers to nothing but exemptions from the power of parliament, or, in other words, that the king cannot give to a colony laws in contradiction to the superior powers vested in parliament, of which the crown is a part. This construction makes lord Mansfield to mean precisely the same thing in his position, limited as it is by his exception, as if that exception were altogether omitted. Could that learned judge state such a number of instances, when the proposition itself would have embraced all that was necessary to state, if his meaning was that which my friend has attributed to him? He had, in the first instance, declared that the crown could not legislate in opposition to a positive act of parliament, by virtue of its prerogative, if he meant no more, what need was there for saying more? or what is the sense or import of the last instances which he puts, "or exempt him from the power of parliament" "or give him privileges exclusive of his other subjects"? That would be contrary to the laws and constitution of this country. The king cannot go so far as to give a particular part of his subjects privileges exclusive of his other subjects. The reason for that exception is to be found in the principles of the British constitution: The crown cannot make any change contrary to fundamental principles. Such being the language of lord Mansfield, it is clear that by the 6th resolution he meant to limit the principle which he had laid down in the 5th, and to declare that the crown had neither power nor right to make or continue laws, which are repugnant to those principles, which are the foundations upon which the laws and constitution of this country rest.

If your lordships will look even at the 4th proposition, namely, that there must be an equality of privilege among the king's subjects, you will see that it stands on the same principle. That there is an overruling power in the constitution which controls the crown, and by which, as soon as colonies or plantations are reduced under the king's dominion, the inhabitants shall be entitled to the enjoyment of the general principles of the English law and the British constitution. The conclusion, therefore, which I draw from the case of Campbell and Hall, is, that the whole scope of lord Mansfield's argument shows that this great

* 2 P. Wms. 75.

and eminent judge stated his general proposition, as to the continuance of the old law, subject to the exceptions and qualifications which had been laid down by his predecessors.

My learned friend, Mr. Stephen, argued this case as if there were no distinction between cases where there was a capitulation and those in which there was nothing but an unconditional surrender; as if there was no distinction between the crown continuing the laws of the conquered country, and creating laws there, or between plantations, where the subjects of the crown have taken possession of some uninhabited country, and cases of positive conquest. His proposition went to this alarming length, that till the king parts with his power, he has an absolute dominion over the life, rights, and liberties of every one of his subjects commorant in any of the colonies. That is the extent to which he pushes his conclusion, in contradiction to those which I have ventured to press upon the Court's attention.

My friend said, that I was driven to great distress, in making a distinction between cases of conquest, where the law was preserved by the terms of the capitulation, and those where it was not. And he attributed to me, or at least insinuated an opinion, as if I thought there was no distinction between them. My lords, I felt no such difficulty. I avoided the point originally from very different views and feelings, and when the question was put upon me by the Court, I did not flinch from the discussion. In the argument I had the honour to lay before the Court, I took the liberty to observe, that every independent state had power to contract, and till the surrender every enemy was an independent state and entitled to make his submission upon particular terms and conditions. It is matter of contract and agreement between parties competent to contract, and by which the conqueror as well as the conquered is afterwards bound. Where laws continue under the terms of a surrender, they are to be considered as matters of privilege, reserved to the conquered, which exempt them from either the particular or general rules of British law as a right. In the same manner as the university of Oxford decides according to the civil instead of the common law; various other similar exemptions might be stated, which take place in this country. But I submitted, that in these, as in all other cases of contract, the validity of the stipulations must depend upon the extent of that authority which the contracting parties have, to bind not only themselves but others. And I argued that even in that which is the strongest case, the power of the crown in making stipulations and acceding to the terms of surrender proposed by the conquered, is subject to those fundamental limits which the laws and constitution impose upon its authority. In support of this position I may put a case where the Court can have no possible doubt. Suppose the

commander in chief should, on the part of the crown, agree that a conquest, instead of being an appendage to the crown of England, should become annexed to his majesty's person, or to his German dominions, could that be enforced as a good condition? Let us suppose another; that his majesty should establish an inequality of privileges between the natural subjects of this country and those of his newly acquired dominion, would not that be another condition which, whether acceded to by a commander on a capitulation, or originally ordained by the crown, could not be considered as valid and binding? and do not these and many other cases, show that the power of the crown in making or acceding to capitulations is limited by some principle?

When, therefore, my learned friend Mr. Stephen stated that the point was so clear, that it was a waste of time to support the case of *Campbell v. Hall* to the extent to which he pushed it, I cannot but express a wish that instead of confining himself to a round and positive opinion, which is the easiest of all things to give, he had stated where the cases and authorities are to be found, which countenance his assertion. If he had only given us a note where these authorities were to be met with, it would have relieved my mind from much difficulty. I can truly say, that having used as much diligence as was in my power, I have not been able to find any authority which supports the 5th resolution of lord Mansfield, in the latitude to which it has been extended according to my learned friend's assertion.

He stated that the experience and practice of all the colonies, were decisively in opposition to the principles for which I contended. I listened to my friend on that subject with peculiar anxiety, because, independent of his great diligence and talents which would have enabled him to produce every authority on the subject if any existed, he possessed that peculiar local knowledge of the laws and constitution of our colonies, which enabled him to detail every instance that could make for his argument, and against mine. But not one such instance has been adduced by my learned friend! On the contrary, the practice and constitution of all the colonies appear directly the other way.

In the first place, let us see what is the law of nations upon the subject, as it is to be found in the conduct of independent states towards each other, and in the treaties entered into between them. In all modern articles of surrender, the uniform stipulation on the part of the vanquished is, that the old laws shall continue; and the general answer on the part of the conquerors is, that these laws shall continue till his majesty's pleasure is known. Now, my lords, if it were the general established law of England, that the old laws must continue until altered by the Crown, there could be no occasion for such an article. See what is the interpretation put on this con-

dition by sir R. Abercrombie, in his conduct and in his instructions, which are to be found in the special verdict: That general says, "And, whereas no provision having been made in the late capitulation, for continuing the Spanish form of law, in the administration of justice in the island; and that form of law having been continued solely by my circular letters to the different captains of quarters, or other magistrates, I appoint," so and so, &c. The interpretation put on this capitulation by the general himself is, that the laws had ceased until revived by him. So in the case of Fabrigas and Mostyn, much reliance was placed on the circumstance, that the old laws were preserved by stipulation. Whereas, if my friend's argument be correct, this circumstance and the stipulation were alike nugatory, and unavailing, the consequence being precisely the same to all parties, whether it was inserted or omitted; yet there is no case of a treaty by capitulation, at least none of which I am aware; in which this article for the continuance of the local jurisprudence is not either altogether omitted, or if inserted, that the answer is not that the law should be continued till his majesty's pleasure was known.

In corroboration of this argument, let us see how the colonies have been governed, and what is the language of the charters by which their different assemblies have been created, and laws have been made. The methods of instituting colonial government are of two kinds, first by a charter, where the crown grants a colony to one or more persons by way of sub-infeudation, which was much in practice in the 17th century; and second, as the modern usage is, by commission.

Of the first kind there are but two charters, so far as I know, in print. The one is a grant by James 1st, of Massachusetts, which grant was afterwards renewed by William 3rd; this was a grant by subinfeudation, importing that the colony was to be governed by the rules and laws of England. In point of fact the laws of England, and the forms of English law, prevailed in every one of the colonies, and even in the Canadas, except with reference to real property.

Mr. Justice Bayley.—That was the effect of positive institution.

Mr. Nolan.—In the instance I have referred to, it was a grant to lord Baltimore. [Here the learned counsel read a part of the charter]. So that none of the laws to be made, were to be repugnant, or contrary to the laws of England. The other instance is that of New York, which was a grant made by Charles the second, in which there was power given to the assembly to make laws, &c. but with the like qualification.

So also in the East India company's charter of the year 1600, there is a power given to make laws, and it is stated that those laws shall be agreeable to the laws of England.

In the charter of 1769—

Lord Ellenborough.—These are qualifications which the crown chooses to annex to the subordinate power of legislation in the colonies.

Mr. Nolan.—That is true: But the reason for these qualifications, is the foundation of my argument; for your lordships know, that if any illegal power is inserted in a charter, it is thereby rendered void; the qualification, therefore, was inserted by those who granted these charters, as essential to their validity or at least to guard against the probability of their being put in hazard. It shows what the general professional understanding, and particularly what that of the king's attorney's and solicitor's-general has been, viz. that the laws of England were the paramount and great fundamental principle of the colonial laws. All the charters of the East Indies up to 1772 contain the same condition.

This furnishes an answer to an observation which one of your lordships did me the honor to address to me, viz. Supposing an habeas corpus to be sued out from this country, and that the return was made of the cause of commitment, and that it stated it to be according to the law of that colony? In such a case, I do humbly conceive if these charters were produced, you must consider whether that law was repugnant to the law of England, or in conformity with the charter under which the judges had power to act.

If, therefore, the fundamental principles of the law of England, are recognised in practice, and reserved by conditions in all the king's colonies, whether established by charter or commission, it seems to follow as a consequence founded not only on principle, but demonstrated by practice, that the power of the crown is limited and restricted by the same wise and fundamental restrictions in the colonies as it is in this country; and that the king is no more absolute as to the extent of his prerogative over territories subdued by British wealth, and British valour, than he is in this hereditary fastness, of equal rights and equal privileges. It is, I presume, in conformity with this principle, that no express provision is necessary for the introduction of English laws into British colonies, either in charters or acts of parliament. By the mere creation of a court, the law follows as an immediate consequence. Thus by the statute under which courts are created in India, there is neither power, nor provision by which it is stipulated that the laws of England shall prevail in those countries; the mere creation of courts gives to their judges all the general powers of administering the law of England, amenable to the like control and subject to similar restrictions.

My lords, Mr. Stephen appears next for the sake of argument, to admit my position, that the prerogative of the Crown over its colonial dominions is confined within certain constitutional limits. My friend says, although that may be so, still Magna Charta is not the limit; for its provi-

sions are subverted in the colonies in various respects. He stated that personal freedom is preserved by the Great Charter, and that it is subverted by the laws of the colonies, because under those laws slavery prevails. Now, in the first place, although I allow my learned friend to have the authority of sir Edward Coke, that *liber homo*, in the beginning of the 29th chapter of that great charter, includes *villains*; yet it must admit of very strong doubts whether the terms *liber homo* can apply to *villains*. "*Liber homo non amercietur pro parvo delicto, nisi secundum modum ipsius delicti; et pro magno delicto secundum magnitudinem delicti, salvo contenemento suo,*" &c. A *villain* can have no freehold. *Liber* must be considered as surplusage if *liber homo* could apply to all men equally, without distinction. In the 14th chapter, therefore, *liber homo* particularly applies to a freeman who had a freehold. So in the 32nd chapter, "*Nullus liber homo det de cetero amplius alicui vel vendat de terrâ suâ,*" &c. it is perfectly clear, that *liber homo* had a determinate meaning applied to freemen only. It appears that slavery was not repugnant either to *Magna Charta* or to our old law. Britton and the Mirror, as well as other ancient writers, speak of slavery as a thing admissible and admitted by law; and that slaves might be acquired by conquest. Not only, therefore, is slavery not contrary to the *Great Charter*, but it never was supposed to be so. In the case of Billy and Rolls* it was so laid down, and the same doctrine is stated in Gelly v. Cleve,† where it was held that Trover lies for a slave. That point was overruled in Smith v. Brown and Cowper,‡ in which it was held, that the form of action was wrong, and that Trover would not lie for a slave. But it was not until the judgment in Sommersett's case, in 1772, that it was adjudged that slavery could not exist in this country. So late as the year 1548, in Wales, six or seven families were all treated as slaves, and sold as slaves. Upon this point it may not be immaterial to observe that it is laid down expressly in the Mirror, c. 2, sect. 28, that a slave becomes free by being baptized and becoming a Christian; which is one reason, as I have been given to understand, why our planters have permitted their slaves to remain in a state of paganism, because they consider that the principles of the English law would attach on them, if they were made Christians, and effect their manumission. But whether this be the opinion of the planters or not, it is at all events extremely clear, that a state of slavery was not repugnant to *Magna Charta*, or the principles of the British constitution.

My learned friend, Mr. Stephen, observed in his argument, that there are other instances in which *Magna Charta* is violated. He stated that by the laws of some of the colonies in the West Indies, a slave who has absented

himself from the service of his master for three months is liable to be considered as a felon, and to suffer punishment as such: That the punishments of burning to death, and of starving to death, exist there. But however cruel such practices may be, they violate no constitutional principle. They are all modes either of bringing a person to judgment, or of punishment for crimes. They are also consonant, in many instances, to ancient institutions in our own laws. In the case of outlawry, if the outlaw did not appear within a year, he was made to answer for it with his life; which resembles, in no small degree, the colonial law, which made it felony for a slave to absent himself for three months. The most horrid punishments were enacted in this country to prevent particular crimes. A statute passed in the time of Henry 8th, by which murder was made high treason, and it was ordained that the guilty should be boiled to death. Nobody ever said or thought that this law, however repugnant to the dictates of humanity, was contrary to *Magna Charta*, or the principles of the constitution. By statutes which were in force till very recently, if the people called Egyptians remained one month in this kingdom, or if any person being 14 years old (whether a natural born subject or stranger), who hath been seen or found in the fellowship of such Egyptians, or who hath disguised him or herself like them, shall remain in the same one month at one or several times, it is felony without benefit of clergy. This is a much severer law than that in the colonies which treats a slave, who has been absent three months from his master's service, as a felon.

My lords, the principle which gets rid of my friend's argument and his instances I take to be this. Different modes of punishment are necessarily more or less severe, according to the moral improvement and civilization of a people; and they partake much of the spirit and manners of the time in which they are enacted; but they are not subversions of fundamental principles. They have neither resemblance nor analogy to laws or judgments which punish a man before he is tried and found guilty, or force him to furnish evidence against himself out of his own mouth. Whether the punishment that results from such proceedings is usual or unheard-of, severe or lenient, is of no importance or consideration. The question here is whether the true principles of defence allowed to all men are to be beaten down and trampled on, and new ones repugnant to our happy constitution are to prevail in any part of the British dominions.

My lords, my learned friend, Mr. Stephen, aware of the conclusiveness of my argument (if I may so speak) upon this point, endeavoured to evade it by asserting, that exemption from torture is not a fundamental principle of the constitution at all; he observes that it is only declared to be so by Blackstone. If there was no other authority, if there was no other writer, who had held the same doctrine,

* 2 Lev. 201. † 1 Lord Raym. 147.

‡ Salk. 666.

I should have contended that the opinion of this sound lawyer and excellent writer would furnish one which ought to be held decisive in my favour. But lord Coke again and again calls *Magna Charta* a fundamental law, and our writers teem with observations on the distinction between fundamental laws, which usage could not and nothing but parliament could alter, and those of a more ordinary texture. My friend, however goes on to state, that if the law of England extends itself to the colonies, it must be universal; and that either all or none can extend thither. Now, that is not a necessary consequence. Let us try the proposition upon principle. In the first place it is not to be disputed, that where a colony is established in an uninhabited country, there the laws of England prevail. Yet the meaning cannot be to apply the English law to these colonies farther than their situation will admit of. That must, I conceive, be conceded to me. Mr. Justice Blackstone,* when he is commenting on the admission of those laws, says, that it is to be understood with considerable restrictions, and as far as it can be done consistently with the situation of the particular colony. On what principle, then, is it, that the laws of England are not to prevail to the same extent in conquered countries as they do in colonies established in uninhabited countries? Undoubtedly the extent of adoption may be different in the different cases; for the rule admits that the situation of each colony may regulate the extent of their observance, and this more obviously as to the statute than the common law. There might be, therefore, and no doubt are, reasons which should prevent the provisions of English law from being carried so far in a conquered country as in an uninhabited country. But the principle of admission applies equally to both, and so does the principle as to the extent of observance in colonies acquired by conquest or discovery, because just as much variety, as to the situation of each colony, requiring different restrictions, may exist in the one case as in the other. But it was observed, that if you have a trial by jury, which is so much admired in England, because it is attended with so many advantages, you must have sheriffs and other officers, and you have not these ministers of the English law. Now that observation would apply to the case of discovered colonies as well as conquests. But it has no weight with reference to the case of a discovered colony: Why, then, should it have any in the case of a conquest? Then again I meet my friend's argument with the essential difference between the forms of the English law, and the principles of the English law. The one may prevail where the other does not. The trial by jury is not in all cases the right of the king's subjects even in this country. Nobody ever supposed, that the mode

of proceeding in the Court of Admiralty, or by the *constable and marshal* when that court was in existence, were violations of *Magna Charta*, yet they differed both in the forms of trial, and in the rules of law, from those of the common law.

I did myself the honour of examining this subject, when I shewed that torture could not be applied at all in England. The Admiralty and the court of the constable and marshal, were governed by the civil law, which as interpreted by modern usage allowed of the torture; yet the resolutions of the judges were positive, that no torture could be applied to the subjects of this country by the law of England, and extended the prohibition not less to these courts than to those of common law. This instance of the Admiralty is one which adheres very closely to the present case, because it is one which embraces offences committed out of this country, and tried within it by the rules of the civil law.

Mr. Justice Bayley.—Tried by so much of the civil law as we adopt.

Mr. Nolan.—Just so, my lord: there is no statute or positive enactment to limit its operation; but having resorted to that law for certain purposes, we are considered as adopting so much of its provisions as are not repugnant to the humane principles of our own law; or in other words, the fundamental principles of our own law, by a paramount and overruling power, control and regulate the provisions of the civil law in its application to the subjects of this country, upon the same principle by which I contend that any act of a colonial court, contrary to the fundamental principles of our own law, would be annulled and counteracted. It does not follow, therefore, because a trial by jury cannot be had, that therefore the accused is to be punished before he is tried at all. It may be impossible that he can be tried by a jury, but it is not a legitimate consequence from thence, that because he cannot have that blessing incident to the English constitution or its advantages in all things, that he should not have them as near as may be where humanity and justice require it. I put this question to my learned friend, in my original argument, to which it is necessary to allude now for the sake of observing upon the answer. If the law of the conquered country began to attach, when did it first attach on the conquerors? And by what principles? It cannot begin till the conquest is complete. Upon what reason or ground, then, is it to prevail after the conquest, and by means of the conquest only? The general principle would be, that those who are reduced under the power of the crown, should rather conform to what the rule was by which the crown governs its own subjects, and that instead of the conquerors submitting to the laws of the conquered, the conquered should submit to the laws of the conquerors. Such was the rule of the civil law, the great mother of all European laws—*pacis imponere mo-*

* 1 Comm. 107.

rem; non, recipere morem. On what principle is it, then, that this old rule of conquest is to be inverted, and that the law of the conquered country shall be conceived to prevail instead of that of the conqueror? My friend has attempted an answer. Says he, according to the case of Campbell and Hall, the laws of the conquered country shall prevail; though it was otherwise by the Roman law. Without stating any other authorities, or going into any grounds for this distinction between the Roman and the modern law, my learned friend went on to state that there was no hardship in this; because, he says, with regard to the subjects of the crown, who are there for military purposes, the crown may exempt them. And with regard to those who come for other purposes, they submit themselves voluntarily under the dominion of the place, and ought to be subject to its laws.

Now, in the first place, he was inaccurate in saying the crown might exempt its own subjects who were there in a civil or in a military capacity; for that would be directly in the teeth of the fourth resolution in his cardinal case of Campbell and Hall, in which it is held, that the crown could not place any part of its subjects in a different situation from the rest. To that extent, at least, therefore, my friend's ground fails. But, he says, all other persons that go there, go voluntarily, and submit themselves to the dominion of the laws of the place. That, as to the conquered, you have no right to compel them to change their religion, or impose upon them your religious principles, so as even to make them Christians against their own free will. In the first place, I can put many cases where people do not go voluntarily into these countries; as, for instance, waggoners of the artillery train, as appears in the case of governor Sabine; so where persons go by inevitable accident, as, for instance, those who are driven thither by storm. Is it to be said that an ambassador or general, or any one else, casually landing in Trinidad, in his passage from one country to another, who happens to be present when a crime is committed, is to be subjected to the inhuman power contended for? that the magistrates of that place have right and authority to tug his joints by torture, to learn whether he knew any thing of the fact, or can relate any thing material as to the guilt or innocence of the accused? There seems to Mr. Stephen no hardship in that! or it is softened to nothing, forsooth, by the observation that you have yourself to blame for coming voluntarily under that local dominion! My learned friend meets the case put, by saying, you who have acquired a right over my life have no right to impose on me, the conquered, this hardship, and his effort to rid himself of the burthen, is by asserting a right in the conquered to impose upon us, the conquerors, as the meed of our achievements, hardships, and conditions, which would not attach to us in our own country where the prin-

ciples of liberty prevail. I say that in all such cases the British laws must prevail. That nothing short of an act of parliament would induce your lordships to hold the contrary. Innumerable instances of a like nature might be stated. Suppose, by the old law of the colony, persons who were found celebrating Divine service according to the rites of the Protestant church, should be burned. Is the chaplain of some embassy to the governor to incur this penalty of fire? I will again suppose this more extraordinary case. It was the law, I believe, in Trinidad, and certainly in other foreign colonies, that the laws of the parent state shall be observed there, which I contend is the governing principle in our own. War continues after the conquest; what law shall prevail in the colony *flagrante bello*? Surely it is impossible to maintain that the conquerors, or even the conquered, shall be bound to observe the laws of their enemy; and, that whether they affect navigation, trade, or any other regulation essential to the general prosperity. If the laws of the conquered country must give way in such cases, upon what principle shall it be said that the laws of the conquered country attach on the conquerors so far as to affect their unalienable rights and privileges; and which have been emphatically called the undoubted inheritance of the king's people, which the crown can no more take away than it can the landed inheritance derived from our ancestors?

Lord *Ellenborough*.—If they are not governed by the old laws, by what laws are they governed? Either the old laws continue, or they cease on the conquest; the laws of the conquering country supersede them, or the old laws remain under certain qualifications. Who is to find out these qualifications? Some of the persons, who are sent out from this country, judging for themselves, may say some of these laws are not consistent with the principles and spirit of the British constitution, and therefore it is not incumbent on us to obey them.

Mr. *Nolan*.—That is one of the points, on which the learned judges have anticipated difficulty; and yet the rule is laid down in the way in which I contend for it, in 2 P. Williams, 75, namely, that the laws and customs of the conquered country shall hold place, unless they are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail. But, I am asked, how the person who is to administer the law is to know it? In fact, the persons who administer the laws there must be Englishmen, or immediately under their control, and subject to their explanation and direction as to what the law is.

Lord *Ellenborough*.—The former laws they knew, because they lived under them, and obeyed them before, but now the two laws are compounded. You will find sufficient diffi-

culty in compounding the two laws. It is supposed to be a part of the customs of China to expose infants. It would be difficult *prima facie* to say that was murder in them, and yet that is *malum in se*; it is as much *malum in se* as any thing can be supposed to be.

Mr. Nolan.—Your lordships observe that the position in 2 P. Williams says, the laws of this country shall prevail where those of the conquered country are either contrary to the laws of God, or are totally silent.

Lord Ellenborough.—My difficulty is about these exceptions; "*fundamental principles*," and "*mala in se*" introduce some difficulty.

Mr. Nolan.—There is undoubtedly a difficulty of drawing the precise line, but so there is in all human matters, and this duty must be reposed in judicial discretion.

Lord Ellenborough.—All difficulty in drawing the line is avoided if, in conformity to the 5th resolution in Campbell and Hall, you say, "That the laws of a conquered country continue in force until they are altered by the conqueror." That leaves no uncertainty or difficulty, as the colony is to remain as it was before.

Mr. Nolan.—My lord, with all deference the uncertainty and difficulty will then be greater. It is agreed, that the practical forms of the old law, including such as affect local property, may be revived or continued, as they were in this instance by the commander-in-chief. The general ordinances of law, as a rule of civil conduct, are in most civilized countries the same in their practical result. The absurd and wicked anomalies against which our constitution wages war, are usually few, and may be removed as speedily and easily by the conqueror, as they might and ought to have been by the ancient government. Here is little difficulty, small novelty, and less hardship; but will your lordships indulge me in putting some cases, to show the mischiefs which must arise from the other alternative? Suppose an Englishman who thinks he has rather too numerous a family, and chooses to put a few of them to death, or considers it right to marry seven or eight wives; is that to be permitted, because the original laws of Ceylon or China allowed their subjects to act so? We may get rid of most of the difficulties in practice with regard to the conquered subjects, by the mercy and humanity of the crown; which can mitigate the rigors of our law whenever sound discretion requires it. But if the laws of the conquered country remain in force, their binding obligation is general, and applies to English as well as natives. The conquerors are to become subject to every municipal regulation, whether virtuous or wicked, expedient or impolitic, whether criminal or civil, whether they respect marriage, religion, or any other right connected with our civil relations and liberties. Surely then the mischief is greater by adopting the laws of the conquered country, without qualification, even than by admitting those of the conquerors, and following the old rule found-

ed upon principle and resorted to in practice in all times since a law of nations was known or practised. A further difficulty presents itself as I proceed. What persons are they who are to administer the ancient law in such cases? Is it the conquerors who know nothing about it, or are the conquered to take the conquerors under their civil dominion by the administration of those laws, of the operation and extent of which their vanquishers are ignorant? When these and other circumstances are balanced and considered, it is more strictly conformable to principle to go beyond the rule for which I contend and, say that the old law ceased altogether upon the conquest, and that the vanquished, as they became subjects of the crown, became answerable to its laws as well as to its government, except so far as they are actually altered by virtue of the king's prerogative, restrained and limited as that prerogative is by the constitution for the nation's good.

Lord Ellenborough.—There is some theoretical inconvenience; there is very little practical inconvenience, whether the form of the government runs in the name of his majesty, or of the king of Spain.

Mr. Nolan.—My lords; the mischiefs and grievous consequences I have pointed out, are not merely theoretical. Conquerors can lose no privilege, as the direct result of their conquest; but to subject them to strange laws, of which they have never heard, is to deprive them of their rights, and strip them of their privileges.

Lord Ellenborough.—The conquerors individually lose no privilege. But if they choose to go abroad into a Spanish colony where a different form of law prevails, they must abide by the consequences. You must either admit that the old laws continue till the new are introduced, or they must be positively in a lawless state.

Mr. Nolan.—I do not think so. The sum of my argument is this. According to the law of nations the civil rights of the conquered cease altogether by the conquest, unless preserved by stipulation. Their old laws must therefore be put into re-operation by the will of the conqueror either express or implied. Our constitution vests this power in the king, and his majesty may entrust this authority to the commander of his forces, until his royal pleasure is definitively known; or the old laws may revive by the self-action of our own laws and constitution, subject to those regulations and restrictions which are laid down in our books. But whether the laws of the conquered are continued or modified by the sovereign's will, and whether that will is expressly or impliedly declared, it is clear that no greater power can be given by the crown than the crown has to bestow; and that his majesty cannot, by his individual authority, continue institutions which he could not, by his prerogative originate in the code of a new colony. If it be clear, then, that the

king can neither by commission nor charter, invest any colonial government with power to punish the accused without being heard or to extract evidence from him for the purposes of conviction by inflicting torture, it is equally clear that he cannot continue such tyrannous institutions in a conquered colony. The limits placed by the fundamental laws of the realm upon the royal prerogative are in this respect, few, plain and simple. It is the duty of those to whom the execution of that prerogative is entrusted, to take scrupulous care that it shall not be exceeded either by themselves or by those to whom the immediate administration of the laws is committed. Very slight attention will be sufficient to enable a governor to guard against the violation of principles which he is bound to know, in common with every other subject: and as generally, if not universally, they mitigate the rigor of other municipal institutions, the conquered will, at least in general, be relieved from oppressive or mischievous enactments; and the king's ancient subjects remain exempt from the consequences of ill-advised or wicked provisions which violate their ancient and inalienable rights.

My lords; I shall not trouble your lordships with any observations on the *peine forte et dure*, because it does not apply to this case. Neither shall I make any upon the countess of Shrewsbury's case, 12 Rep., 94. That case came before the council. It concludes significantly with this observation: "*Hoc in terrorem, sed quare quid inde venit,*" &c. It was rather a political thing to frighten her, than a sound and serious resolution.

My friend's next proposition is, that the infliction of torture was a judicial proceeding founded on the sentence of a court having competent jurisdiction over the cause; and that the judicial character of the act, done in the capacity of a judge, constituted a justification for doing it. This raises the question whether general Picton had any authority as a judge to do the act. My lords, the terms in which Mr. Stephen has put his proposition have relieved me from arguing a point on which the Court appeared to feel some little doubt, namely, whether it could be supposed that this order was given by general Picton as an executive magistrate. From the time when the case was first brought before this Court, until the moment when the doubt was suggested, it was always understood to be general Picton's act, as a judge, and not as the head of the executive government. If there could be any doubt upon that point, it must be removed by looking into the special verdict.

In the first place, the tribunal is stated in the special verdict, to be a tribunal of appeal.

In the next place, the special verdict sets forth, that no sentence could be put in execution until it was submitted to the court of appeal in the Caraccas, for approval or rejection, so that the words of the special verdict leave no doubt, that this order was not the act of

the executive government; for it does not appear, that the court of the Caraccas had any executive power over the island of Trinidad.

It is, indeed, an act of the executive power to determine whether a sentence shall be carried into execution or not; but the confirmation or rejection of the sentence is a judicial act. And the court of the Caraccas was only a forum of appeal, to reverse or confirm the sentence pronounced in the island of Trinidad, which was, in that respect, a subordinate jurisdiction. But the point is now given up by my learned friend. He puts his case upon its being a judicial, and not an executive act. My learned friend has said, that general Picton acted either as *alcalde* or governor, and either the *alcalde* or the governor, or both together, had power to inflict torture, which is an answer to this indictment. That if the *alcalde* had the power, he only asked the advice of general Picton, which is something like the *constitutiones imperatoriae*, answers of the prince. It was his advice, and not his authoritative act. Protesting against this supposed analogy, I have to observe, that to this argument there are two decisive answers. In the first place, the special verdict finds it was not done by the authority of the *alcalde*, but by the authority of general Picton. In the next place, it is found that the *alcalde* had no power to order the torture of his own authority.

The next mode in which my friend put his case is, that there was an appellate power given by general sir R. Abercrombie in his instructions, and under that appellate power this act was done. Now, my lords, to that there are answers just as decisive. In the first place, that appellate power was not given from the court of the *alcalde*, but from a court erected by general Abercrombie himself, namely, the court of the chief justice; therefore, even supposing that the power of the chief justice was not afterwards to a certain degree put away by his majesty's instructions, no jurisdiction was thereby vested in general Picton over the *alcalde's* court. The authority given by the crown must be strictly observed. But so far is that rule from being followed here, that the case was before the *alcalde* instead of the chief justice, from whose tribunal alone general Picton possessed an appellate jurisdiction; and it is impossible to contend that the right of appeal over one court gave him jurisdiction over another, which was altogether different. Besides it can admit of no possible doubt that general Abercrombie had no power to erect or constitute any court, with authority to try the king's people, after his majesty's pleasure was made known. Therefore, even if I were to go the length of supposing that this case was brought into the court from which general Picton would, under general Abercrombie's instructions, have a right to entertain an appeal, and that general Picton did entertain the question in his appellate capacity, yet still

it never was supposed that the commission of a commander in chief gave him power to erect tribunals and courts of justice, which were to continue by virtue of that commission, after his majesty, by means of his great officers of state, had sent out his commission and instructions for the governor of the country, and ordained regulations inconsistent with those given by the commander in chief. Perhaps up to that period, any regulations of the commander in chief might continue; but no further. There is a case on record which shows, that a commander having military power over life and death, has no power of this kind.

Mr. Justice Bayley.—After the conquest, could corporal punishment be inflicted in any case?

Mr. Nolan.—Undoubtedly it could. Martial law exists from the very moment of the conquest; it continues until the conqueror proclaims some other rule for the civil regulation of the island, or until his majesty's pleasure is known.

My lords, such was the usage in this country during different great struggles and disturbances. After martial law was proclaimed, your lordships' jurisdiction ceased. It was the case also, not long ago, in Ireland; on the proclamation of martial law, the common law was no longer in force.

Lord Ellenborough.—That is a regulation by statute, the promulgation of martial law having the effect of producing the suspension of the ordinary municipal laws.

Mr. Nolan.—Undoubtedly, that was the case in Ireland. But speaking from recollection, there are many instances in our books where persons have been tried by martial law, when it existed in this country, as proclaimed by the king's authority, and not by any statute. You will find in lord Hale a great deal on that subject. I wish anxiously to avoid discussing the right of granting the power of civil regulation, as assumed by general sir R. Abercrombie, between the conquest and the time when his majesty's pleasure was known. No power could be more discreetly or better exercised than it was by that distinguished officer. But supposing sir R. Abercrombie to have had the power which he assumed, general Picton did not conform to it. And further, whatever power was vested in general sir R. Abercrombie, as it originated either in the express words of his commission, or was thereby permitted from the necessity of his situation, it continued no longer than until his majesty had indicated his pleasure as to what the regulations and government of that country should be. I therefore take it to be clear, that there is no ground for saying that general Picton derived any authority from general Abercrombie to do what is now complained of. On the contrary, he did it of himself, unauthorized by any instructions from his superior.

My lords, the next question is, whether general Picton had power to do this act under

the king's commission; and that is really the sole point worthy of discussion on this part of the case. It may be necessary just to state to your lordships what the terms of that commission are. The first material part of the commission is article 5. "It is our will and pleasure that, for the present, the temporary administration of the island should, as nearly as circumstances will permit, be exercised by you according to the terms of the capitulation hereunto annexed, in conformity to the ancient laws and institutions that subsisted within the same previous to the surrender of the said island to us, subject to such direction as you shall now and hereafter receive from us under our signet or sign manual, or by our order in our privy council, or to such sudden and unforeseen emergencies as may render a departure therefrom absolutely necessary and unavoidable, and which you are immediately to represent to one of our principal secretaries of state for our information. But it is nevertheless our special command, that all the powers of the executive government within the said island, as well civil as military, shall be vested in you our governor, or in the person having the government of the said island for the time being; and that such powers as were heretofore exercised by any person or persons separately, or in conjunction with the governor of the said island, shall belong solely to you our governor, or to the person having the government of the said island for the time being, &c."*

Now, my lords, in the first place, it is found that in the capitulation there was no provision for the continuance of the laws. My proposition therefore is, that this article applies only to the executive and not to the judicial power or authority. What then is meant by these words, "The temporary administration of the island shall be exercised by you, according to the terms of the capitulation?" Why, that you are to refer to the terms of the capitulation for the exercise of the rights which are stated in the capitulation itself, in which the laws are not included.

Mr. Justice Bayley.—Will you have the goodness to read the 7th article?

Mr. Nolan.—My lord, I am perfectly aware of the 7th article, and I will do that by-and-by.—"It is our command that all the powers of the executive government within the said island, as well civil as military, shall be vested in you our governor," &c. This 5th article, therefore, relates solely to the executive power, to which the terms of capitulation were intended to be altogether confined. My learned friend Mr. Stephen says, that your lordships ought to give this article as liberal an interpretation as possible. Surely this is the first time that such a proposition was ever

* Vide antè, p. 500.

heard of in a court of justice. I have always understood that, *with regard to power assumed by one subject over others*, the right was to be construed as strictly as possible, instead of liberally. It admits of no such thing as a favourable interpretation when authority is exercised by one subject over his equals. But if the rule was more relaxed, still no such liberal construction is admissible, as that the 5th clause, which refers only to the case of the executive government, should be extended to the administration of justice.

I come now to the 7th article, which relates to the mode of administering justice in the island. His majesty's instructions contain his sovereign pleasure on that point, and unavoidably supersede all such as were given by the commander in chief previous to that time.

"It is our will and pleasure, that, for the present, and until our farther pleasure shall be signified, the same courts of judicature, which subsisted in the said island previous to the surrender thereof to us, shall, for the present, be continued in the exercise of all the judicial powers belonging to them in civil and criminal cases; and that they shall proceed according to the laws by which the said island was then governed; and that such judicial powers as previous to the surrender of the said island to us were exercised by the Spanish governor, shall be exercised by you our governor, in like manner as the same were exercised previous to the surrender of that island."

Mr. Justice Bayley.—Now I ask you upon that, could there be any case in which corporal punishment could be inflicted for crimes?

Mr. Nolan.—I think there could.

Mr. Justice Bayley.—It is stated in the special verdict, that where any sentence was pronounced by any of the courts in Trinidad, by which a party was to suffer corporal punishment, such sentence could not be carried into execution till it was transmitted to the superior *forum* of Caraccas for its confirmation or rejection.

Mr. Nolan.—I do not mean, my lords, to leave that part of the case untouched. I am sorry to have troubled you so long. Let us return to this article, which sets up all the authorities that existed in the island previous to its surrender to his majesty's arms, but sets up none other, and *à fortiori* none greater than those which then existed.—The English governor, therefore, possessed no more authority under that article, than the Spanish governor did previous to the conquest. It is, indeed, specially found, that the latter had not any paramount jurisdiction in respect of which he could have taken cognizance of cases of this sort, for it is found that he had no controlling power over the original tribunals of the island, and that the three jurisdictions were co-equal; none of them having a right to interfere with the other, the only appeal being to the court of Caraccas. Un-

doubtedly, then the express language of this article gives no greater power. Let me suppose, therefore, that the alcalde had the power of inflicting punishments of all sorts, previous to the surrender of the island; and that general Picton had, subsequently to the king's commission, thought proper to interpose an appellate jurisdiction; surely he could not justify himself under the authority of this article. It gave him no power to interfere with the alcalde. The meaning of the clause being, that he was thereby put precisely in the same situation in which Spanish governors stood previous to the conquest; who, if they had done any thing like what general Picton has done, would have acted contrary to law, and must have resorted to the mercy of their sovereign for pardon. If I am correct in these positions, the point is reduced to the question, whether any necessity, arising from the situation of the colony, could have justified the governor in assuming this power. This involves the consideration of Mr. Justice Bayley's observation, that, unless the governor had such power, it would be impossible to inflict any corporal punishment in the island. Before I examine this argument *ab inconvenienti*, it will be proper to discuss the principle upon which this supposed justification rests. This was put by my learned friend with great ability. He seemed to argue thus: I admit that, considered *per se*, no such power is given to general Picton by the instructions from the crown; but it is a *casus omissus*, and being so, the instructions of general Abercrombie upon this head are not repealed.

Now, I take it to be clear, as I have more than once observed, that where the sovereign indicates what his will and pleasure is, all the authority that was possessed prior to that time, under the instructions of the commander-in-chief, ceases. There is no principle upon which powers given antecedent to the royal commission, are by implication to be annulled in part, and continued for the residue. But it is urged, that no punishment could be inflicted for the want of the appellate jurisdiction of the Caraccas, which could alone sanction it in the event of an appeal, and therefore that general Picton must have this power as essentially necessary to the preservation of social order, and the maintenance of public good. Now I can venture to assert with deference, but still with some confidence, that there is no case to be found in our books which warrants such a monstrous proposition, as that power is given to one subject over another, upon the principle that it ought to have been conferred by the crown, but has been accidentally omitted in the royal grant. Who is to judge of this necessity? or which of the king's subjects is to arrogate this dominion over his fellow-subjects who, in contemplation of law, are all equal, without a clear delegation of the right by some legal manifestation of the royal pleasure? But if the principle were as much

against as it is for me, I should state, that the necessity which is supposed to justify such a usurpation, did not exist in fact. The only difficulty pretended is, that there must be a postponement of punishment, until the king's pleasure is known,—until a new commission or particular instructions are sent from England. In the mean time, the defendant would be kept in gaol, instead of undergoing immediately either death or some other punishment commensurate with his crime. Such procrastination of punishment was even greater under the ancient government where an appeal was allowed, first to the audience of the Caraccas, and ultimately to the Spanish king in council. If the old law was to be followed as closely as possible; these impediments to speedy justice were to be favored and not removed. But admitting this delay to be a mischief, and a considerable one, is it not less injurious to the king's people, than a manifest violation of the law, in a tyrannous assumption of power? I denounce it as such, because, I believe in my conscience, this is the first time that any effort has been made in this free country, to ground upon this plea of tyrants a defence for such outrageous conduct. Let me suppose, that in consequence of some grievous treason, it is necessary to try some offenders by special commission, or that such violations of the public peace, in murders and robberies had occurred, as made a speedy conviction and execution of the offenders not only salutary but essential to the public good; or that under a military commission, it was necessary that the general should be intrusted with extraordinary powers—would the most imminent necessity, the most manifest peril and jeopardy to the *salus publica* authorize any of the learned judges or any commander, either civil or military, to assume such authority, or could it amount to any thing in the nature of a legal excuse, unless the power was expressly given by commission from the crown? My lords, I do state, that having looked anxiously into many books to see whether necessity could authorize any person to act in such a case, although under the influence of the purest intentions, there is no authority or usage which warrants such an assumption; and practice is in every respect against it.

The third and remaining proposition of my learned friend is, that the defendant having acted without malice, the judicial character of the act is a decisive answer to the indictment; and that, whether the proceedings were regular or not: or in other words, that the judicial character of the act exempts the person acting as a judge from all penal consequences, merely because he took it upon himself, and without other authority than his own free-will assumed the judicial functions. To state the position is, in my humble judgment, to refute it. I am not speaking of cases where the judge, having a clear jurisdiction over the matter tried, either mistakes the law or mis-

applies it. The question here put is, whether a person who *ex concessis* has no jurisdiction, and in fact assumes the character of a judge, for the purpose of trying an offence, is to derive security and protection from such an assumption of lawless power by the very act which constitutes his criminality. Omitting, therefore, such arguments as these, the court must look at the true question, which is, whether general Picton had an authority for what he has done by virtue of the king's commission. If he had no authority thereby given him to act as a judge of appeal, he is undoubtedly answerable for his illegal assumption of power, and answerable in this Court.

My lords, I will not go into the discussion of any observations about the expedience, or inexpedience of making the defendant answerable in this country. I will content myself with citing the words of lord Mansfield in the case of *Mostyn and Fabrigas*.* "He is accountable in this court, or he is accountable no where, for the king in council has no jurisdiction." "Therefore to lay down in an English court of justice such a monstrous proposition, as that a governor, acting by virtue of letters patent under the great seal, is accountable only to God and his own conscience; that he is absolutely despotic, and can spoil, plunder, and injure his majesty's subjects both in their liberty and property with impunity, is a doctrine that cannot be maintained."

My lords, with this observation I should close this tedious case, in which I have been compelled to many repetitions, by the time that has elapsed between its several stages, and the change of members which has occurred in this court. But my learned friend has adverted to the 11th and 12th of William 3rd and to the 42 Geo. 3rd, c. 85, and his observations deserve some answer. The 11th and 12th William 3rd, intituled "An Act to punish governors of Plantations in this kingdom for crimes by them committed in the Plantations" is as follows:

"Be it enacted &c. that if any Governor &c. within his majesty's dominions beyond the seas, shall be guilty of oppressing any of his majesty's subjects beyond the seas within their respective governments or commands, or shall be guilty of any other crime or offence *contrary to the laws of this realm*, or in force within their respective governments or commands, such oppressions, crimes and offences shall be inquired of, heard, and determined in his majesty's court of King's-bench here in England," &c.

Surely this is a strong legislative declaration and exposition, that every governor of our colonial dominions is bound to conform himself to the law of this country in the administration of his government, and that if guilty of any oppressions, crimes, or offences

* Cowp. 175.

contrary to the law of England, he is to be responsible here. If it be clear that governor Picton has, in this case, acted in contradiction to the laws of England; for that oppression he is to be tried here under this act; for the only object of this statute (and so far my friend was right) was, to alter the *forum* where the trial should take place, and not by any means to affect either the crime or form of indictment.

It is said that this case does not come within the 42nd of Geo. 3rd, c. 85, which is argued thus: The statute of William 3rd applied only to governors; the 42nd of Geo. 3rd extends to other persons besides, but only to such cases where persons would be triable and punishable in England, if the act were done here. And as the judges of the supreme court could neither be triable nor punishable in England, therefore this judge cannot be tried and punished. How does this position correspond with the terms of the act? [The learned counsel here read the first clause of the act.]

The act therefore expressly extends to all persons exercising public offices, or acting in a public capacity. Is not the situation of governor or a judge in Trinidad a public office? and was not the act complained of done by general Picton, when acting in a public capacity? If this be so, is he not manifestly brought within the words of the statute? My friend says, the defendant cannot be punished here for such misconduct; is not any person who exceeds his jurisdiction in this country, criminally answerable for that crime? To give the clause any other construction, would be to defeat its meaning, and destroy its beneficial effects. But further, on what ground is it that he is to be considered as a judge of a court of superior jurisdiction, and entitled as such to the advantages which such judges possess in this country? Such courts are not courts of record; mere distance gives them no title to be considered as such, as they are not holden to be so by the common law. Is not the sole question then, whether such an assumption of excessive jurisdiction is not a misdemeanor, which in any judge, excepting the twelve judges of England who sit in a superior capacity, would be triable in England? If the mayor or recorder of London were to exceed his jurisdiction, is there any doubt that they might be tried in this court

for such excess? If any one of the judges of courts of record, with the exception of the king's superior courts, act beyond their jurisdiction, are they not amenable here? Then has not general Picton, exercised a public function in this colony? If he has, the statute applies; because this offence, if committed in England, would have rendered him guilty and punishable. Any other interpretation would deprive the act of all its effect. If my learned friend's construction were to prevail, persons in the defendant's situation never could be punished. As superior judges in the colony, they could not be brought there to justice; and if in this country they are likewise exempted upon the principle of being superior judges; they are not punishable at all, unless by the extraordinary interposition of parliament. Whereas the object of the legislature clearly was, to make all who were entrusted with public functions in the colonies amenable in this country for all acts of oppression and cruelty, or whatever else is done by them in contravention of the laws and constitution of this realm.

I make no comment on the last part of my learned friend's speech; perhaps his observations had better have been spared. Whether the defendant ordered this infliction of torture from personal malice, or from that general malice which the law annexes to all illegal conduct, is of no importance as to the question of illegality. Before he signed that inhuman order, he ought to have paused, as I am persuaded every man who hears me would have paused. He should have reflected how such an act must affect his own character, and that of his country. If the general has been calumniated, no man regrets it more than I do; but we must not confound the universal expression of public feeling and abhorrence towards an act at which the mind of every Englishman must revolt with the insidious artifices of private calumny. Every honest man must reverence the one, and detest and despise the other.

Lord *Ellenborough*.—The Court will consider those points which have been agitated on both sides, and will give their judgment after they shall have had an opportunity of fully considering them.

Note.—No further proceedings took place in this case, until Hilary Term, 52 Geo. III. A. D. 1812, when the Court ordered the defendant's recognizances to be respited until they should further order.

It was thought by the Bar, that had the opinion of the Court been delivered, judgment would have been given against general Picton; but that upon a consideration of the merits, it would have been followed by a punish-

ment so slight, and so little commensurate with the magnitude of the questions embraced by the case, as to have reflected but little credit upon the prosecution; and I have been informed, that it was by the advice of one of the learned counsel, who greatly distinguished himself in arguing the questions which arose in this case, that it was not again agitated.

In the month of July 1809, while this prose-

cution was still pending, the defendant, general Picton (as it has been reported, at the unsolicited recommendation of the then commander-in-chief), was appointed to the command of a brigade, at the attack upon the Island of Walcheren, where he was seized by a fever, from the effects of which he never fully recovered. In January 1810, he held a similar command under sir Arthur Wellesley in Portugal; and was soon after nominated to the command of the third division, which made so conspicuous a figure during the whole of the peninsular war.

After the battle of Vittoria (which was fought on June 13th, 1813), he, on account of ill-health, returned to England: he was then elected to serve in Parliament, as member for the borough of Pembroke (of which county he was a native), was appointed colonel of the 77th regiment of foot, and was chosen a knight of the Bath. On the 11th of the following November, the unanimous thanks of the House of Commons were presented to him for his military services.

He immediately afterwards rejoined the army of Spain, and commanded, at the battles of Orthes and Thoulouse, the same division which he had so often before led to victory. On the 24th of June 1814, he again received the thanks of the House of Commons; and he fell at the battle of Waterloo in June 1815, "gloriously leading his division to a charge with bayonets, by which one of the most serious attacks made by the enemy upon our position was defeated."* The nature and extent of those services which called forth the votes of thanks above alluded to, are thus concisely and eloquently displayed by the eminent individual who then filled the chair of the House of Commons.

"November 11th 1813.

"Lieutenant-general sir Thomas Picton, knight of the most honourable order of the Bath, being come to the House, Mr. Speaker acquainted him with the resolutions of the House of the 7th of July last, and of the 8th instant, respecting his services in the battle of

* These are the terms in which his death is commemorated by the duke of Wellington, in the despatch announcing the victory of Waterloo, as published in the London Gazette. A monument to the memory of sir Thomas Picton has been erected in the Cathedral of St. Paul's, by an unanimous vote of the House of Commons.

Vittoria, and in the subsequent operations of the allied armies in Spain; and Mr. Speaker gave him the thanks of the House accordingly as followeth:—

"Lieutenant-general sir Thomas Picton; In this House your name has been long since enrolled amongst those who have obtained the gratitude of their country for distinguished military services; and we, this day, rejoice to see you amongst us, claiming again the tribute of our thanks for fresh exploits and achievements.

"Wherever the history of the peninsular war shall be related, your name will be found amongst the foremost in that race of glory; by your sword the British troops were led on to the victorious assault of Ciudad Rodrigo; by your daring hand the British standard was planted upon the castle of Badajoz; when the usurper of the Spanish throne was driven to make his last stand at Vittoria, your battalions filled the centre of that formidable line, before which the veteran troops of France fled in terror and dismay; and by your skill, prudence, and valour, exerted in a critical hour, the enemy was foiled in his desperate attempt to break through the barrier of the Pyrenees, and raise the blockade of Pampluna.

"For the deeds of Vittoria and the Pyrenees, this double harvest of glory in one year, the House of Commons has resolved again to give you the tribute of its thanks; and I do therefore, now, in the name and by the command of the Commons of the united kingdom of Great Britain and Ireland in parliament assembled, deliver to you their unanimous thanks for your great exertions upon the 21st of June last near Vittoria, when the French army was completely defeated by the allied forces under the marquess of Wellington's command;

"And also, for the valour, steadiness, and exertion, so successfully displayed by you in repelling the repeated attacks made on the position of the allied army by the whole French forces under the command of marshal Soult between the 25th July and 1st of August last."

"June 24, 1814.

"Lieutenant-general sir Thomas Picton; You stand amongst us this day, to receive our thanks for great and signal victories won by British arms in the fields of France.

"Descending from the Pyrenees, surmounting in adverse seasons, all the difficulties of a

country deeply intersected, and passing with unparalleled skill and boldness the formidable torrents of Navarre, after a series of arduous and sanguinary conflicts, you came up with the collected forces of the enemy, posted upon the heights of Orthes. Attacked on all sides by British valour, the troops of France at length gave way, and commenced their retreat; pressed however upon each flank, that retreat was soon changed into a flight, and that flight to a total rout: pursuing their broken legions across the Adour, and seizing upon their strong holds and accumulated resources, you then laid open your way, on the one hand, to the deliverance of Bourdeaux, and, on the other, to the lamented but glorious day of Thoulouse.

"It has been your fortune to reap the latest laurels in this long and memorable war; and, leading forward your victorious columns

from the Tagus to the Garonne, you have witnessed, with arms in your hands, the downfall of that gigantic tyranny which your own prowess has so materially contributed to overthrow.

"Informed of these triumphant exploits, this House lost no time in recording its thanks to all who had bravely fought the battles of their country. But to those whom we glory to reckon amongst our own members, it is my duty and happiness to deliver those thanks personally. And I do now accordingly, in the name, and by the command of the Commons of this united kingdom, deliver to you their unanimous thanks, for your able and distinguished conduct throughout all those operations which concluded with the entire defeat of the enemy at Orthes, and the occupation of Bourdeaux by the allied forces of Great Britain, Spain, and Portugal."

677. The whole Proceedings in the Case of EDWARD ALURED DRAPER, Esquire, on an Information for writing, printing, and publishing certain Libels upon the Right Honourable JOHN SULLIVAN: 46—48 GEORGE III. A. D. 1806-1807.*

COURT OF KING'S BENCH.

May 6th, 1806.

MR. GARROW.—I humbly move your lordships for a rule to show cause why a criminal information should not be exhibited against lieutenant-colonel Draper, of the third regiment of foot guards, the avowed author of a book which contains a gross libel upon the right honourable John Sullivan, heretofore one of the under secretaries of state for the colonial department.

The present application originates in a transaction which has lately been before the court, I mean the trial of general Picton, late governor of the island of Trinidad. On that occasion colonel Draper wrote a book, which was published by a bookseller of the name of Budd, in defence of the conduct of governor Picton. In one part of this book he relates a conversation which he represents as having taken place between Mr. Sullivan and a Dr. Lynch, upon which he animadvert in very strong language. It is upon this part of his book that my present application is grounded.

The following affidavits were then read.

The right honourable John Sullivan,

* See the Case of general Picton, *antè*, p. 225. See also the next case.

one of his majesty's most honourable privy council, and late his majesty's under secretary of state for the colonial department, now residing at Riching's Lodge, in the parish of Iver, in the county of Bucks; and John Budd, of Pall Mall, in the parish of St. James's, in the county of Middlesex, bookseller, severally make oath and say; and first the said John Sullivan for himself saith, that from the month of May in the year 1801, to the month of May 1804, he this deponent acted as under secretary of state in the war and colonial department; and this deponent further says, that some time in or about June 1801, Thomas Picton, esq. was, by commission under the great seal, appointed governor and commander in chief in and over the island of Trinidad; that in the month of October 1802, William Fullarton, esq. and captain (now sir Samuel) Hood were appointed by his majesty's commission under the great seal, joint commissioners with the said Thomas Picton, to take upon themselves, and exercise, jointly with the said Thomas Picton, the government of the said island: and this deponent further says, that having been informed that a certain book had been published containing strong reflections

upon this deponent, and which book, as this deponent has discovered, is entitled "An Address to the British Public on the Case of Brigadier General Picton, late Governor and Captain General of the Island of Trinidad, with Observations on the Conduct of William Fullarton, Esquire, F. R. S. and the Right Honourable John Sullivan," this deponent went on the twenty-ninth day of April last to the shop of the said John Budd, bookseller in Pall Mall, at whose shop the said book, upon the title page thereof, purported to be sold, and did there buy a copy of the said book: and this deponent further says, that in a certain part thereof the said book professed to state a certain letter from a Dr. Lynch to a Mr. Gloster, dated some time in the month of February 1805, importing therein that this deponent, in a conversation with the said Dr. Lynch, some time previous to the month of December 1802, told the said Dr. Lynch that in all probability general Picton would be ordered to return to England before six months, as colonel Fullarton was instructed to investigate his past conduct in Trinidad: and this deponent further says, that the said book also professes to state the copy of an affidavit therein supposed to have been made by the said Frederick J. Lynch some time in the month of July 1805, and verifying upon oath the said statement in the said letter: and this deponent further says, that in another part of the said book, and immediately after the said supposed copy of the said supposed affidavit, is the following passage, "Here is a gentleman," &c. [All the quotations in this affidavit are inserted at length in the Information *infra* p. 982] and in another part of the said book, "I do therefore again call upon you, Mr. Sullivan, to come forward, and to answer my question. In the name of," &c. [Vide Information, p. 983.] And this deponent further positively and solemnly declares, that he never did, either directly or indirectly, inform the said Dr. Lynch or any other person, either in conversation or otherwise, before the month of December 1802, or at any other time, that in all probability general Picton would be ordered to return to England before six months, as colonel Fullarton was instructed to investigate the past conduct of general Picton at Trinidad, nor use any words to that or the like effect. Nor had this deponent, previous to the month of December 1802, any knowledge or any reason to believe, that it was probable that general Picton would be ordered to return to England; nor did this deponent then or at any time since know, nor has he now any reason to suspect or believe, that the

said colonel Fullarton had any instructions whatever, either of a public or private nature, to investigate the conduct of the said general Picton in Trinidad, or to procure his removal from the government of that island, or his being ordered to return to England; nor until April 1803, had this deponent any reason to know or to suspect that any circumstance had occurred, that had occasioned any difference of opinion between the said general Picton and colonel Fullarton, but on the contrary, this deponent expected and believed, that the said colonel Fullarton and general Picton would co-operate in the most cordial and friendly manner, in carrying into execution the powers given to them in and by the said commission, and this deponent expressed himself on all occasions to that effect to the said colonel Fullarton, previous to his departure, and in all his correspondence with the said colonel Fullarton, and particularly in the last letter written by this deponent to the said colonel Fullarton, before his departure from England, this deponent expressed himself as follows: "From the manly character of general Picton, I am led to hope, that you will quickly fall into habits of free communication, and I know from my own experience, how much reason he will have to be satisfied with your mode of proceeding." And this deponent further says, that this deponent's said hopes and expectations of cordial co-operation of the commissioners was strengthened by the first letter from the said colonel Fullarton after his arrival in Trinidad, dated 12th January, 1803, which, amongst other things, contains the following passage: "I was received by general Picton with great politeness, and with all the attentions which lord Hobart had been pleased to direct," and the letter afterwards adds, "General Picton and I have carefully read lord Hobart's instructions to the commissioners, and we shall not lose a moment in preparing to carry his lordship's intentions into effect." And this deponent further saith, that he never did, upon any occasion, take any step or recommend any measure either of a public or private nature, with a view, or that had or could be construed to have a tendency in any manner whatever to prejudice or injure the said general Picton, as governor or commissioner at Trinidad, or otherwise. And this deponent further saith, that he has not the least doubt, but that he is the person alluded to in the parts of the said book herein-before stated. And this deponent further saith, that an application having been made on this deponent's behalf, to the said John Budd, to learn who was the author of the said

book, this deponent, on the eve of Saturday, the third day of May, instant, received a letter, a copy of which is hereunto annexed. And this deponent, John Budd, for himself saith, that he is acquainted with the hand-writing of the said Edward Alured Draper, and has seen him write and received letters from him, and that he has seen the said letter, a copy of which is hereunto annexed, and that he verily believes the same to be in the hand-writing of the said Edward Alured Draper.

Sworn in Court, by the Deponent, the Right Honourable John Sullivan, this 6th day of May, 1806.

By the COURT.

JOHN SULLIVAN.

Sworn in Court, by the Deponent, John Budd, this 6th day of May, 1806.

By the COURT.

JOHN BUDD.

THE LETTER ABOVE REFERRED TO.

Pall Mall, May 3rd, 1806.

SIR;—I understand from my bookseller, Mr. Budd, of Pall Mall, that he has been required to give up the manuscript copy of the Address to the British Public, published with my name; that this demand has been made by a gentleman who calls himself Mr. Frogatt, and your solicitor, who at the same time held out threats of legal punishment to Mr. Budd, in case his requisition was not complied with.

Although, Sir, I never had the honor of your acquaintance, and even may have been totally unknown and perhaps unheard-of by you, until very lately, I am yet to flatter myself that the style and manner in which my public charge against you is drawn up, and the remarks which accompany that charge, by no means characterise a man who would shrink from any responsibility which may possibly attach to the expressions in which he has conveyed the one or the other. I am rather inclined to suppose, that your solicitor's calling upon Mr. Budd for the manuscript, and threatening him with the pillory in case he did not give it up, was one of those legal steps which the practice of the law renders necessary and perhaps indispensable. In that case, it is the act of Mr. Frogatt, and not of Mr. Sullivan, and I can account for it.

It is perhaps unnecessary, in the present instance, to assure you, that I never in my life asserted any thing as a fact, which I did not believe to be true; that there are few things that I have written, which I did not know to be fact, and cer-

tainly not a single word, that I have printed and published, which have not my unqualified credit and belief, and which consequently, under these circumstances, I am not prepared to defend and substantiate.

Actuated entirely by these principles, I cannot hesitate one moment in gratifying either your own private curiosity (which a simple note of compliment from you would have previously ensured), or in now satisfying the wishes of your solicitor by informing you, that if you will direct him to take the trouble to call on Mr. Miller, No. 35, Red-Lion-square, he is at full liberty to review the manuscript, and take all such extracts as he may choose to make the ground of a criminal information against me. I have little doubt, Sir, but you have weighed the consequences of your intended step with as much seriousness as I did those attached to me before I published. I have passed the Rubicon, and you, Sir, I understand, are preparing to follow. My suspense is over, and I heartily congratulate myself on my resolution. Before this letter reaches you, it is not unlikely that you may have actually executed the preliminary step to that measure which will give the colour and complexion to your future life. If this has not yet taken place, it is generous, it is just, it is charitable, and surely, Sir, it is not presumptuous, to beg of you to consider—to pause yet a little—to think, Sir, and to weigh well this point—to reflect most seriously that the question between you and me will not, cannot be decided by *mere law*—to be assured and satisfied, whatever your lawyers may tell you to the contrary, that the decision of the Court of King's Bench on any libellous matter (legally so called) contained in my charges against you, will no more exonerate you in the eyes of your country and the opinion of all considerate men, from the irreparable disgrace and infamy attached to your concealment of the author of your private instruction to your friend, Mr. Fullarton, than any hostile decision against me can injure or prejudice me in the opinion of my sovereign, or of one honorable man in England.

Do you, Sir, seriously believe, or is it your intention to attempt to discredit Dr. Lynch's oath? If there were as many law libels as there are words in my book, these would no more go to exculpate you from my charge, than your own affidavit would clear you from that of Dr. Lynch, could I imagine so monstrous a supposition as your making one. What! Rebut the oath of Dr. Lynch by another?—I say again, Sir—impossible! you cannot think of it! you well know,

Sir, that the truth of an assertion does not prevent it from being considered a law libel. I trust that you did not conceive me quite so ignorant a man as not to have been well aware of this, and most assuredly I have well prepared myself to make my charges an additional proof of the law as it stands. I must say, Sir, that I think you very ill-advised: you have indeed a tremendous case before you. I solemnly assure you, that only in so far as I must feel indignant at, and reprobate a man's conduct which I believe like your's to be bad, I have no other ground of enmity or ill-will against you: it is impossible I can have any other. I have arraigned you as a public servant, and have brought forward the proofs of my indictment. You have one, and but one, fair, clear, unequivocal and honorable way of getting rid of this business. The numbers who have already read my book are all to a man of that opinion; and even, Sir, without your assistance, many days will not pass over before the whole nation will join me in the same sentiment. I do not seek your correspondence, Sir, and therefore I shall acquit you of all imputation of inattention or incivility by declining to acknowledge my letter.

I have the honor to be,

Your obedient humble servant,

EDW. A. DRAPER.

John Budd, of Pall Mall, in the parish of Saint James, in the county of Middlesex, bookseller, maketh oath and saith, That he was applied to about a month ago by lieutenant-colonel Edward Alured Draper, to publish a pamphlet intituled, "An Address to the British Public on the Case of Brigadier-General Picton, late Governor and Captain-General of the Island of Trinidad, with observations on the Conduct of William Fullarton, Esq. F. R. S. and the Right Honorable John Sullivan," and did publish the same accordingly. And this deponent further saith, that the printed book shown to him at the time of making this affidavit, and marked (A B a) is one of the books so published by this deponent by the orders and on the application of the said lieutenant-colonel Draper.

JOHN BUDD.

Dennett Jaques, of Lower-Sloane-street, in the parish of Saint Luke, Chelsea, in the county of Middlesex, printer, maketh oath and saith, That he was employed about a month since by lieutenant-colonel Edward Alured Draper to print a pamphlet intituled, "An Address to the British Public on the case of Brigadier-General Picton, late Governor and Captain-General of

"the Island of Trinidad, with Observations on the Conduct of William Fullarton, Esq. F. R. S. and the Right Honorable John Sullivan," and did print the same accordingly. And this deponent further saith, that the printed book shown to him at the time of making this affidavit, and marked (A B a) is one of the books so printed by this deponent by the orders and on the employment of the said lieutenant-colonel Edward Alured Draper.

DENNETT JAUQUES.

Lord Ellenborough.—Take a rule to show cause.

IN THE KING'S-BENCH,

MIDDLESEX.

The KING,

On the Prosecution of the
Right Honorable JOHN SULLIVAN,
against

EDWARD ALURED DRAPER, Esq.

Wednesday next after one month of Easter, in the Forty-sixth year king George the Third.

Middlesex. } Upon reading the several affidavits of the right honorable John Sullivan and another, and a paper writing thereto annexed, Dennett Jaques and John Budd: It is ordered, That Saturday next be given to Edward Alured Draper, to show cause why one or more information or informations should not be exhibited against him, for certain misdemeanors in writing, printing, and publishing certain scandalous libels, upon notice of this rule to be given him in the mean time.

On the motion of Mr. Garrow.

By the COURT.

COURT OF KING'S-BENCH,

May 14th. 46 Geo. III. A. D. 1806.

JUDGES.

The Right Hon. Edward Lord Ellenborough, C. J.;

The Hon. Sir Nash Grose, Knt.;

The Hon. Sir Soulden Lawrence, Knt.;

The Hon. Sir Simon Le Blanc, Knt.

Mr. Sergeant Best.—My Lords; I am to show cause against a rule that was obtained by Mr. Garrow, calling on colonel Draper to show cause why one or more information or informations, should not be exhibited against him for certain libels on John Sullivan, esq. The rule has been obtained upon these affidavits. [The learned Sergeant here read the affidavits of Mr. Sullivan and of Mr. Budd.] I have, in answer to them, a very short one from colonel Draper, and also one from a gen-

tleman of the name of Gloster, who was, and I believe still is, his majesty's attorney-general in the Island of Trinidad.

In the first place, Mr. Draper says, he is a lieutenant-colonel in his majesty's service, and that previous to the application for the enlargement of this rule, he had called at Mr. Budd's, the sole publisher of a pamphlet, written by this deponent, intituled, "An Address to the British Public," and desired, that all the copies thereof then remaining unsold, might be sent to him; which was immediately done. He also says, that he has not either directly or indirectly, caused to be sold or lent to read, or otherwise circulated any copy thereof, or any extract thereof, since the said copies so came into his possession. And he further says, that he did not know, nor had the least idea of a necessity of stopping the said publication, until Sunday evening last, or he would have taken such steps earlier.

The next sentence of this gentleman's affidavit is very important. Your lordships may recollect, that in the affidavit of Mr. Sullivan, upon which the rule is founded, that gentleman speaks of Dr. Lynch's affidavit, as if he entertained some doubt of its existence; he speaks of it as a *supposed* affidavit; from which you might be led to think, that it never did exist; but colonel Draper's affidavit puts that out of all doubt.

"And this deponent farther says, that the original affidavit stated by this deponent, in his said publication, to have been sworn by Dr. Lynch, and the original letter written by Dr. Lynch, are deposited in his majesty's privy council office, and that he, this deponent, hath applied for and obtained the official copies thereof," &c.

Lord *Ellenborough*.—Can the question whether this affidavit exists or not, make any difference, as to the extraordinary interposition of the Court? Here is an affidavit, which the defendant cannot know either to be true or false, but he adopts it as true, and publishes it to all the world with comments.

Mr. Sergeant *Best*.—He had every reason to believe it to be true.

Lord *Ellenborough*.—He considers it as true, he makes his comments, and uses various calumnious expressions, which I thought unnecessary to take down.

Mr. Justice *Lawrence*.—He says, "You have uncloaked the stiletto, and endeavoured to plunge it into the heart of one of our bravest and most meritorious officers."

Lord *Ellenborough*.—What right has any man to publish that as true, which may be false?

Mr. Justice *Grose*.—No man has a right to adopt the bare assertions of another man as true. He is as bad as the original slanderer. He adopts the libel, and carries it farther.

Mr. Sergeant *Best*.—He adopts the affidavit

of Dr. Lynch, which certainly he had good reason to suppose was true.

Mr. Justice *Lawrence*.—Suppose he *knew* it to be true, that is no justification of the publication of a libel. If it were true, it is no defence. If Mr. Sullivan has done any thing that is wrong, proceed criminally against him for his misconduct.

Mr. Sergeant *Best*.—My lords, I was about to state, that I do not mean to contend, that the truth of the subject matter is in point of law any justification. I am not so ignorant of the law of the land, as to advance such a proposition. But the ground which I take is this: Mr. Sullivan thinks proper to apply for a criminal information against colonel Draper. The truth or falsehood of that which has been published, can, undoubtedly, make no difference as to the verdict which the jury would be called on to find; but still, with great deference, I submit, and I submit with confidence, that if there be any reason to believe that the substance of that affidavit is true, the Court will not interfere by this extraordinary mode of proceeding. And I farther conceive with great deference, that by the practice of this Court, before any gentleman can obtain a criminal information, he must make what is called an *exculpatory affidavit*. He must state that what is charged of him has been charged without any foundation in truth. If that be the situation of the person whose character is impeached, I humbly conceive that the opposite party should have an opportunity of verifying what has been denied by the prosecutor. If that were not so, in what situation would parties be placed?—I do not mean to say any thing harsh of Mr. Sullivan; nothing can be farther from my thoughts; I have no doubt that he thinks what he has said is true; God forbid I should think he has stated to the Court, that which he knew to be false: I am not contending that Mr. Sullivan will come forward and endeavour to obtain from the Court this information, by representing that which he knows to be false;—but if colonel Draper can make out, that what he has said with respect to Mr. Sullivan is true, although the truth or falsehood of this libel would make no difference as to the *verdict*, yet I submit that your lordships will not interpose this extraordinary mode of proceeding. Mr. Sullivan will not be prevented from taking the usual course: he may go before a grand jury; but if colonel Draper can make out the truth of his allegations against Mr. Sullivan, this court will not interfere by granting a criminal information.

Colonel Draper concludes his affidavit by solemnly saying he did not write or publish the writing complained of, or any part thereof, from any motive of malice against the said prosecutor. He believed this affidavit to be true, from his knowledge of Dr. Lynch: for he swears that "he believes Dr. Lynch to

"be a person of unimpeached integrity and of high character, and universally esteemed in the island of Trinidad;" and he says, "unless he had been fully convinced of this, he would not have stated the same in his said publication, or made any of those remarks which occur in that publication in consequence thereof."

The affidavit of Dr. Lynch was laid before the privy council of this country.

My lords, I have also the affidavit of a person of high character—Mr. Gloster, the attorney-general of the island. He states that he has seen this affidavit; that he believes Dr. Lynch to be a man of unquestionable honour and veracity, and that he was held in very high esteem by the chief inhabitants of the island. He concludes with saying—"And this deponent believes him incapable of fabricating any report, which could by possibility tend to injure any person or persons whatsoever."

Now, my lords, under these circumstances, supposing I could establish all these facts, supposing I could prove them to demonstration; if colonel Draper were now upon his trial, even although every word of that affidavit were true, and every word that is stated on the part of the defendant to meet the affidavit of Mr. Sullivan were true, it would, I admit, be no defence. Where, however, there is a contrariety of evidence, you will not now at all events, grant this motion for a *criminal information*, but we shall have an opportunity of obtaining from Trinidad farther accounts from Dr. Lynch himself with respect to the truth or falsehood of that which he has stated. Whether that affidavit be true or false, it is impossible not to see that colonel Draper supposed every word of it to be true. I submit, therefore, that whether it be true or false, you would not grant a criminal information against a man, who has been misled by such a document, who has made observations on the contents of that affidavit publicly and fairly, because he believed in his conscience the affidavit of Dr. Lynch and the facts contained in it were perfectly true.

My lords, I should be the last man to encourage any person to publish that which he had no right to publish. Undoubtedly the characters of public officers ought to be protected. Mr. Sullivan's character, no doubt, ought to be protected. But there is no reason to suppose, that colonel Draper acted from malicious motives; he made honest observations, giving full credit to the truth of that affidavit. And though the characters of public officers, and particularly those in the situation of Mr. Sullivan, are to be protected, I submit that other persons should not be severely dealt with for acting honestly, and having a fair pretence—

Mr. Justice Grose.—Acting honestly and fairly for what purpose?

Mr. Sergeant Best.—Your lordships will allow me to answer that—

Mr. Justice Grose.—You will observe in the letter written by colonel Draper to Mr. Sullivan, acknowledging himself to be the author of this publication, there are words strongly tending to a breach of the peace. He says, "the question between them cannot be decided by mere law."

Mr. Sergeant Best.—My lord, that can be explained. "Whatever opinion the Court of King's-bench may entertain of your character and mine, that question will not be decided by mere law: the public will still think fit to exercise their own judgment on the subject." I do not conceive that these words have any tendency to a breach of the public peace. My lord, the point which your lordship has put would be applicable to the publication of every paper which animadverts on any public officer. It might be asked for what purpose it was published?—It was published, because the people of this country have a right to animadvert upon the conduct of any public man, provided it be done fairly and honestly. If a man imputes crimes to another, which he knows do not exist, he is a base, malignant libeller. If this gentleman had a well-grounded reason to suppose what he has said to be true, this is not a case in which the Court would interfere by this extraordinary mode of proceeding.

Now, if you consider all the facts of this case, the balance of evidence inclines most strongly against Mr. Sullivan. I do not mean to charge him with falsehood. By no means. I do not say so. Mr. Sullivan may have forgotten he ever used such language. But if he did not use it, *Dr. Lynch must be perjured*. Mr. Sullivan would be excused if he has forgotten it; but Dr. Lynch states positively—he undertakes to recollect, and pledges his veracity to your lordships and his country,—that *this very language was used*. Dr. Lynch swears most positively that the expressions contained in his affidavit were made use of by Mr. Sullivan. And considering the situation in which he stood, if Dr. Lynch's affidavit be true, and Mr. Sullivan actually did use them, he acted in a most reprehensible manner. They were expressions which he ought not to have used; and show, that instead of sending out commissioners to assist general Picton, he in fact sent out spies to watch him.

Lord Ellenborough.—Brother Best, you wish to produce an affidavit from Trinidad?

Mr. Sergeant Best.—Yes, my lord.

Lord Ellenborough.—Under what authority? The first is a voluntary affidavit made by Dr. Lynch. Suppose we wished in this case to go the full length with you, by what authority could this court grant a commission to take such an affidavit?

Mr. Sergeant *Best*.—Your lordships would have no authority to compel Dr. Lynch to make such an affidavit; but we undertake that he will make it.

Mr. Justice *Lawrence*.—What means have we to punish him, if it be not true?

Mr. Sergeant *Best*.—Affidavits are read here, which have been made in Scotland, although this court could not punish the makers of them, if false.

Lord *Ellenborough*.—I rather think that as that is done in consequence of a particular act of parliament, there are provisions applicable to the case. So under acts of parliament, the trial of offences committed abroad, in certain cases, may take place in this country; and we can grant a commission for taking affidavits. But I do not see how we can do so in this case.

Mr. Sergeant *Best*.—The Court certainly could not compel Dr. Lynch to make an affidavit.

Lord *Ellenborough*.—Could we read an affidavit made in Trinidad?

Mr. *Garrow*.—The learned sergeant, by implicitly following his instructions, is at this moment in the situation in which his client wishes him to be, and not in the situation which he himself would choose. The expression of a "supposed affidavit" is the language of the person who drew the affidavit. Your lordships observed that the affidavit made by Dr. Lynch was a voluntary affidavit.

Mr. Sergeant *Best*.—My lords, it is this moment suggested to me by one of my friends, that there is a case in the Term Reports* from which it appears that an affidavit from the Isle of Man was read in this court.

Lord *Ellenborough*.—That was in a civil case.

Mr. Sergeant *Best*.—The rule, I submit, must be the same in criminal cases.

Sir *Vicary Gibbs*.—The Court never inquires into the truth or falsehood of the charge, but requires a man to purge himself.

Lord *Ellenborough*.—That rule was followed in the case of the King on the prosecution of Sir Francis Sykes v. Miles,† where, as there was no denial of the imputation, it was held that there was no ground for the Court to interfere. But when the party complies with that rule and denies the charge, the defendant ought to be ready with his justification or excuse. Instead of that, he wishes the rule to be enlarged until he sends to Trinidad to get an affidavit made, without competent authority, and without any jurisdiction in this court to punish Dr. Lynch if the affidavit should turn out to be false.

Mr. *Garrow*.—Colonel Draper professes to be ready with his proofs.

Mr. Sergeant *Best*.—Colonel Draper firmly believed that he was ready, having obtained an office copy of Dr. Lynch's affidavit from the privy-council office.

My lords, I shall not trouble you farther than by recalling your attention to one circumstance. I hope and trust you will think it is perfectly clear, that, as this affidavit of Dr. Lynch had been acted upon in this country, whether Mr. Sullivan used these expressions or not, colonel Draper must have thought that he did use them; and therefore now, if Mr. Sullivan chooses to proceed, he should proceed in the regular way by indictment.

I will read to the Court the words of Dr. Lynch. He states, that a conversation took place between him and Mr. Sullivan in or about the month of November 1802, "when the said John Sullivan, esq. in the course of this conversation, inquired of this deponent whether he this deponent had any letters to his majesty's commissioners; to which this deponent answered that he had two to general Picton: upon which the said John Sullivan recommended this deponent to procure some, if possible, to the first commissioner colonel Fullarton, and stated that the said colonel Fullarton would have it in his power to be of more service to this deponent than general Picton could be, or words to that effect. And this deponent further maketh oath and saith, that the said John Sullivan assigned to this deponent, as a reason for such recommendation, that in all probability general Picton would be ordered to return to England before six months, as colonel Fullarton was instructed to investigate his then past conduct."

My lords, I state this for the purpose of showing that colonel Draper adopted this as true, firmly believing in his conscience at the time that it was true. Then he is warranted in saying that he was misled in stating that which was not true;—misled from what he knew of Dr. Lynch, and from the fact of that affidavit having been acted upon in this country.

Under these circumstances, I trust your lordships will not now grant this information; and if the prosecutor chooses to proceed in the mean time, he may adopt the common and ordinary mode of proceeding in this court.

Mr. *Marryat*.—My lords; I am on the same side. And although you could not in this case read that affidavit from Trinidad in answer to the affidavit on which the present rule is grounded, that affidavit having been made long before this application, you may, I conceive, read any foreign affidavit, if the signatures of the party who made it, and of the magistrate before whom it was taken, have been duly certified. Nor will the Court draw the distinction between civil cases and cases like the pre-

* *Dalmer v. Barnard*, 7 T. R. 251.

† *Doug.* 284.

sent. And Mr. Sergeant Best has laid before your lordships a case, where it was decided that an affidavit made in the Isle of Man, on authenticating the signature of the magistrate, could be received. Can it be questioned that it is competent to colonel Draper to produce an affidavit in answer to that which was made for the purpose of grounding this application to the Court? I do not suppose that the Court will, on consideration, feel it necessary, that colonel Draper should be prepared with an affidavit from Dr. Lynch; because you know an affidavit, taken and sworn by way of anticipation, cannot be read by way of answer to a subsequent charge. Of course the only affidavit which can regularly be before the Court, must be one obtained subsequent to the application; and therefore the present affidavit before the privy council could not be read.

My lords, we wish for an opportunity of sending to Trinidad, under the circumstances which I shall state to your lordships. It is quite clear that, if in answer to a rule for leave to file a criminal information, suspicion is thrown on the party applying for that rule, the Court will leave the complaining party to the ordinary course of justice. If it appears, on the whole circumstances of his own affidavit, that he has not conducted himself correctly, or if his conduct is doubtful, the Court will be equally disposed to discharge this rule. What is it we claim? To have an opportunity of laying before the Court an affidavit from Trinidad, before colonel Draper is bound to answer this application; Mr. Sullivan being at liberty to pursue the regular course by indictment in the mean time. Under what circumstances do we ask this? The publication is stopped; and not in consequence of what passed a day or two ago in this court, but it had been intimated to colonel Draper on Sunday evening, that pending this proceeding it might be fit to stop the publication; and therefore previous, as he swears, to any motion to enlarge the rule, he had thought it proper to withdraw it from the public, and get every copy sent to himself. And now, therefore, there being no fresh grievance, nor the smallest danger that this will ever be repeated, we humbly conceive colonel Draper ought to have an opportunity of producing an affidavit in answer to the present application.

It was suggested at the time the rule was moved for (I was then in Court, and though I did not then know I should have any thing to do with this business, I think I remember to have heard it stated), that this had been the subject of inquiry before the privy council; that Mr. Sullivan had denied it, and that colonel Draper had expressed himself in a particular manner. I do not find that Mr. Sullivan had denied it prior to this publication, and still less that colonel Draper had any intimation that such a denial had taken place.

This is a rule to exhibit an information or

informations on a particular allegation that there is something in colonel Draper's letter to Mr. Sullivan that may have a tendency to break the peace. The particular expressions have been alluded to, "The question between them will not be decided by mere law." If we look at the context, we shall see clearly that that expression refers to public opinion, and that the writer means that public opinion will not be decided by any verdict of a jury, of guilty or not guilty, inasmuch as he has learned, that the truth or falsehood of his book would not decide the question of libel or no libel. It is not public opinion, or private, that makes a breach of the peace. This letter contains no enmity against any body; and from the beginning of it to the end, I can find nothing like a provocation to commit a breach of the peace.

With regard to the book itself, it proceeds on hypothesis, and not with matter of direct attack. It states strong expressions, which are either inapplicable to Mr. Sullivan, or which are put only on supposition. He charges him most explicitly, with having stated to Dr. Lynch what Dr. Lynch has sworn in his affidavit. He then says, "That you have acted upon this declaration, it is almost impossible for me even to know. I do not say you have, because I cannot prove it. But if you have really acted upon it, surely I am well entitled to say, 'In what language shall I address so 'black and cowardly a tyrant.'" These last words in inverted commas are evidently not his own, but alluding to some expressions which had been used elsewhere, and which had been applied to general Picton.

Mr. Justice *Lawrence*.—He applies them to Mr. Sullivan.

Mr. *Marryat*.—He puts it hypothetically; if Mr. Sullivan had done this, it would be applicable to him.

Mr. *Garrow*.—In the preceding paragraphs in pages 75 and 76 he expressly charges him.

Lord *Ellenborough*.—Mr. Marryat, as we are limited in point of time, you will have the goodness to go on.

Mr. *Marryat*.—He says, "I will endeavour to drag the Cacus from his den." That cannot be at all applicable to Mr. Sullivan.

Lord *Ellenborough*.—Look back a line or two, and you will find these words—"I will take you from your hiding place, or your protection, be it where, or who it may," &c.

Mr. *Marryat*.—"You must now come forward. This business shall be no longer overlooked or forgotten; while I live and have a pen or tongue, you shall not escape investigation or notice."

Mr. Justice *Grose*.—The person that is to come forward, is to be taken from his den.

Lord *Ellenborough*.—They are introduced as the same person.

Mr. *Marryat*. — My lords, I will read the whole paragraph. “I do therefore again call upon you, Mr. Sullivan, to come forward and answer my question; in the name of the British empire, in the name of the army that supports, serves, and sheds its blood for that empire, in the name of every thing honourable, just, and fair, do I call upon you, John Sullivan, esq., to avow the author of these secret instructions. You must, sir, now come forward. This business shall be no longer overlooked or forgotten. While I live and have a pen or a tongue, you shall not escape investigation and notice. I will take you from your hiding-place or your protection, be it where or who it may, and summon you as an officer and gentleman to avow your author for those private instructions. The task I know is Herculean, but I will endeavour to drag the Cacus from his den. It is in vain, Mr. Sullivan, to sophisticate about the business; a disavowal on your side is totally and utterly impossible, entirely incredible. You, sir, I am satisfied, will never think of it. Dr. Lynch, I state, is anxious to re-assert and corroborate his affidavit at the bar of a British court of justice.”

There is one expression that is properly applicable to Mr. Sullivan, and seems to be particularly pointed against him. It is in page 278, “Of what signification even, is the consideration of his august sovereign and Master? A trap is craftily laid: the plot is framed: the newspapers are plied: paragraph succeeds paragraph: quarto follows quarto: every wicked engine is at its dirty work—no stop—no pause—and before any detection or exposition of the infamous conspiracy can take place, reputation is in the dust; when at length the hour of development does actually arrive, the worn-down officer is prostrate, a bankrupt in fortune as well as character, and the under secretary remains still a pillar of the state.”

Now, my lords, the former part of this publication explains the meaning of all this. Colonel Draper applies this to the antecedent statements in the former part of his book, with which Mr. Sullivan is not supposed to have any connexion. Much, therefore, of this general charge does not immediately apply to Mr. Sullivan, is no attack upon him, but refers to particular matters in question between general Picton and colonel Fullarton. And yet this part has been inserted in the prosecutor's affidavit, on the supposition of its being applicable to him.

My lords, the material consideration here is, whether there is any thing to preclude colonel Draper from having an opportunity of sending to Trinidad to procure Dr. Lynch's affidavit, in answer to the present application. When there is no publication going forward, and when there is no danger of any intermediate circulation of the imputed libel, what possible detriment can occur to Mr. Sullivan

from a suspension of these proceedings, till an opportunity is given to colonel Draper to send to Trinidad for the purpose of obtaining Dr. Lynch's affidavit? Mr. Sullivan has come here with full knowledge that Dr. Lynch is in the island of Trinidad, having thought fit to make this application on the assertion that it is a supposed affidavit only, though it is manifest that this affidavit is in the privy council office. And though it is not a judicial affidavit, if we are indulged with time, we shall have his judicial affidavit before the court.

Mr. *Gurney*.—The rule which the Court has prescribed to itself, in this branch of the administration of justice, is, that the party applying for the information, should, in the first place, by affidavit, lay before the Court probable grounds of accusation, and that he should in the fullest manner deny the imputations contained in that paper which he charges to be a libel. My lords, I conceive the rule calling on the party who makes the application, to do that, would be completely nugatory, unless the party moved against were at liberty, in the fullest manner to answer both of these things; unless he were at liberty in the first place, to negative the existence of that crime, the probable grounds of which are contained in the affidavit on which the rule is grounded, and unless he should be equally at liberty to fasten guilt on the prosecutor.

My lords, I can refer your lordships to numberless cases of application to this Court for criminal informations, where upon the party against whom the application was made showing that the prosecutor was not that blameless person he had stated himself to be in his affidavit, the Court has held he was not entitled to this extraordinary indulgence and interposition of the Court. My lords, in various cases where it has appeared that the party applying has himself been wholly or partially to blame, or there has not been a perfect confidence given to the oath which he has taken, the Court has left such prosecutors to the ordinary process of an indictment. Now, what is it that colonel Draper requests? He is not making a request without cause—he is not inventing the existence of a person in Trinidad—he is not inventing a story—but he is only asking this indulgence, according to the proper forms of law, that he may have an opportunity of sending to Trinidad and obtaining from Dr. Lynch a judicial affidavit. Our affidavit verifies the existence of the original letter and affidavit of Dr. Lynch, and also that colonel Draper had obtained from the privy council office official copies of that letter and affidavit. That affidavit is perfectly extra-judicial. But though it was not made in the course of a cause, it was made in the course of an inquiry to be sent to the privy council in this country, to defend general Picton against a charge made against him by

colonel Fullarton. It was, therefore, an affidavit not made from mere idle curiosity, but made in the course of a regular and proper inquiry.

There is next the affidavit of Mr. Gloster, the then and present attorney-general of Trinidad, in which he states, that being informed that Dr. Lynch had said that such a conversation had passed between him and Mr. Sullivan, that learned person applied to Dr. Lynch to know whether it was true. He found that it was, and that Dr. Lynch committed it to writing to be sent over here to colonel Picton. Dr. Lynch was applied to, to say whether he was ready to verify that affidavit. He readily did so, and it is now upon the table of the privy council of this country—

Lord Ellenborough.—Do you not think that constitutes a most material circumstance against you? A particular document lying on the table of the privy council, is drawn forth for the purpose of arraigning an honourable gentleman at the bar of the public.

Sir V. Gibbs.—Mr. Sullivan has not thought proper to say any thing—

Mr. Gurney.—My learned friends on the other side are so sore, that they wish to stop every word that goes in answer to this charge. It does not appear on the face of these proceedings that it is now *sub judice* in the privy council; and therefore I should hope, that you would not be of opinion that the inquiry was pending.

Lord Ellenborough.—It must be known to all the parties that a commission was lately sent out to inquire into particular matters, which it is not necessary to detail.

Mr. Gurney.—I believe from this court.

Lord Ellenborough.—No; from the privy council.

Mr. Gurney.—Colonel Draper only asks of your lordships to have the means of showing that to be true, which he published with a full belief of its truth; it having been stated both on the honour and on the oath of a man of unimpeached veracity. I trust you will give him an opportunity of verifying the contents of that letter and of that affidavit. And if it shall ultimately turn out to be founded on fact, you will leave Mr. Sullivan to the ordinary tribunals of the country.

Mr. Garrow, in support of the rule, was stopped by the Court.

Lord Ellenborough.—In considering this question, I will give the defendant an advantage to which he is not entitled: I will suppose this affidavit of Dr. Lynch, which was sworn in the island of Trinidad, to have been sworn there since the motion for this information was made; still I am at a loss to know on what principle it could be received

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here, and how it could at all affect the determination of the Court in this case.

Mr. Marryat seems to think, there is no instance in which foreign affidavits have not been received. I wish to know in what instances they have been received, except in cases similar to that which has been cited. If there are such instances, I should like to know the principle on which the practice is founded: for even if we were to receive the assertions of a party not verified by an affidavit for which he is penally responsible by any law of this country, I am quite at a loss to know how these could be put in competition with an oath, made by a party in this country, and for which he is penally responsible.

In the present case, the party applying for the information has complied with the rule of the Court, which, in order that we may not be occupied with matters which are not becoming the dignity of this court, requires that the party applying for a criminal information should, by affidavit, lay before the Court the grounds of accusation, and deny *in toto* the imputations of the supposed libel.

There are exceptions to this rule,* as where the party is abroad, and an application is made to the Court by his friends on his behalf; in that case, the Court have dispensed with the rule. The rule is likewise dispensed with, where the slander is of so general a nature that it would be too much to require the party to deny it. Many of the imputations in this publication are incapable of denial. As, for instance, “a dark and cowardly malignity.” “In what language shall I address so black and cowardly a tyrant?”

Now, supposing this affidavit to be made by Dr. Lynch, to what would it amount? It would certainly go to show, that Mr. Sullivan had communicated to that gentleman, something about the governor of the island of Trinidad, viz. that it was probable he would be recalled in six months. But it would not justify the collateral calumny in this publication. The defendant takes this affidavit of Dr. Lynch as his text. He enters into wide comments extending vastly beyond the limits of that affidavit, and utters circumstantial calumnies of his own. Is he not responsible for that? If the affidavit had been made in this court, and Dr. Lynch were now present to admit it, would that be sufficient? I should not think it a sufficient ground for refusing the rule, because the Court could not investigate the truth or falsehood of it. And though this gentleman, Dr. Lynch, should make the affidavit which it is suggested he would make, I think it ought not to prevent our granting the rule. I do not deny that both in civil and criminal cases, the rules of evidence are not substantially the same. But it is in the nature of man to

* R. v. Haswell and Bate, Doug. 337.

look with more anxiety to a criminal than to a civil case.

It appears to me, that there is no pretence to enlarge this rule for the purpose of sending to Trinidad for Dr. Lynch's affidavit. And if this precedent were established, in what cases might not a defendant resist the immediate granting of an information? He would only have to suggest, that he believed the slander to be true, for that he had heard it from a man, who had written to him from foreign parts, and then an application, as in this case, would be made to the Court to suspend the proceedings, by enlarging the rule till an affidavit of the truth of the libel could be obtained from abroad. It would be a *recipe* to resist the granting of an information in any case. It would be made a ground for preventing the rule from being made absolute in any instance.

Mr. Justice *Grose*.—We should be very much wanting in our duty to the justice as well as to the peace of the country, if we did not grant an information for this misdemeanor. Every thing requisite and necessary has been done by the prosecutor. He has brought before the Court a book of very dangerous tendency, and he has given a total denial of the truth of its contents. Is it to be expected that we should try the truth of it by affidavit? No. If I were perfectly satisfied it was a libel, and the party that was brought here believed it to be true, and swore that he had reasonable cause for his belief, I would nevertheless grant an information. And I do not perfectly agree with what my brother *Best* has stated, namely, that if a man had a well-grounded reason to believe it was true, no information should go. There might be a well-grounded reason to believe that the libel was true; but I expect that he should *know* it to be true in point of fact before he publishes it to the world. I most readily agree to and adopt what has been stated by my lord.

Mr. Justice *Lawrence*.—I agree that this rule should be made absolute. The applications to this Court for informations are made in those cases where the ordinary modes of administering justice would be insufficient to secure the peace of the country. What is now desired on the part of the defendant? That this Court should suspend all farther proceedings in the case, and enlarge the rule till an answer shall come from the West Indies; this would defeat one of the great objects of this mode of proceeding. The person who applies for an information from this Court, shall deny the truth of what is charged in the libel. If he does not deny it, he does not come as it is called with clean hands. But this prosecutor does come in that state. What is the imputation upon him? Not merely that he sent instructions to investigate the conduct of general *Piston*, but

colonel Draper imputes to Mr. Sullivan the basest motives by which a man can be actuated, and publishes them in this book. It is said, however, that all this is to be proved by the affidavit of Dr. Lynch; and he now wishes that we should allow him to send to the West Indies for the purpose of obtaining an affidavit from that gentleman, which must necessarily delay this proceeding, and which affidavit, when procured, would not be worth a farthing.

If the Court are satisfied that the party applying for the information does not come before them with clean hands and in a pure light, they will not interfere. This is quite different. We are asked to do this on an affidavit which is perfectly extra-judicial, and for which, if it were to turn out to be false, we cannot punish the maker. On the other hand, if the affidavit of the prosecutor be false, he may be punished. This application is made on a ground that was never thought of before, and which can never be adopted by the Court.

Mr. Justice *Le Blanc*.—The object of colonel Draper is rather to obtain time to oppose this application, than to show that the offence has not been committed. It is necessary to determine whether, after the party applying for the information has denied the truth of that which is suggested in Dr. Lynch's affidavit—after he has denied the truth of the libel—this Court, in the exercise of a sound discretion, will grant farther time to the defendant to obtain from Trinidad an affidavit from Dr. Lynch? And the Court will likewise take into their consideration, whether that affidavit, when produced, if put in the opposite scale, could by possibility outweigh the affidavit of the prosecutor. Suppose an affidavit sworn in Trinidad; it is impossible that an affidavit of that description, made by a party resident there (and whom we could not render personally responsible if it should prove to be false), could be considered as sufficient to weigh down an affidavit made in the regular course of a judicial proceeding; and therefore it seems to me that the Court would not, on the production of such an affidavit, give the same force to it as they would to the other: The Court could not think it sufficient to counterbalance the affidavit of the prosecutor.

Rule Absolute.

MIDDLESEX.

EASTER TERM, 46th George III.

INFORMATION

States that Edward Alured Draper, of Pall Mall, in the parish of Saint James's, in the said county of Middlesex, esq. being a person of a wicked and malicious temper and disposition, and unlawfully and unjustly, wickedly and maliciously devising, designing, contriv-

ing and intending, to defame, asperse, scandalize, and vilify the character of the said John Sullivan, upon the first day of May, in the forty-sixth year of the reign of our Lord the now king, with force and arms, at Westminster aforesaid, in the county aforesaid, did unlawfully, maliciously, wickedly, and scandalously publish, and cause and procure to be published, a certain wicked, infamous, false, scandalous, and defamatory, libel, containing therein divers scandalous, wicked, and defamatory matters of and concerning the said John Sullivan, in which said libel was then and there contained, as and for the copy of a certain supposed letter, by the said libel supposed to have been written by one Frederick J. Lynch, doctor of physic, to one Archibald Gloster, as follows: to wit, "Trinidad, Feb. 18, 1805—Sir; In compliance with your request, I have the honour of communicating to you in writing, the substance of part of a conversation which I had with Mr. Sullivan, chief secretary to lord Hobart, at his lordship's office in Downing-street, somewhat previous to the month of December, in the year 1802, where I went to learn on what terms government intended to grant lands in this colony: in the course of the conversation, Mr. Sullivan asked me, whether I had any letters to his majesty's commissioners? I replied, that I only had two to general Picton, on which he recommended me to procure some, if possible, to the first commissioner, colonel Fullarton, as he would have it in his power to be of more service to me, for that in all probability general Picton would be ordered to return to England before six months, as colonel Fullarton was instructed to investigate his past conduct in Trinidad. This, Sir, having been so mentioned to me, as to a perfect stranger and not in confidence, occasioned my surprise in the month of March following, that it was not generally so understood in this colony. Permit me, Sir, to add, that in consequence of the unmerited treatment which general Picton has since experienced, it will give me pleasure if this communication can in any way tend to show, that that treatment was premeditated. I have the honour, Sir, to be, &c. &c.—Signed, Frederick J. Lynch, M. D. To the Hon. Archibald Gloster, &c. &c." And in which said libel was also then and there contained, as and for the copy of a certain supposed affidavit by the said libel supposed to have been made by the said Frederick J. Lynch, as follows, that is to say, "Trinidad, Frederick J. Lynch, of the Port of Spain, island of Trinidad, esq. doctor of physic, maketh oath, and saith, that in or about the month of November 1802, he was present at the office of his majesty's secretary of state for the colonial department, and a conversation then took place between this deponent and John Sullivan, esq. respecting Trinidad,

and particularly as to grants of land about to be made to persons going thither, and on what terms such grants could be obtained. When the said John Sullivan, esq. in the course of such conversation, inquired whether this deponent had any letters to his majesty's commissioners; to which this deponent answered, that he had two to general Picton; upon which the said John Sullivan, esq. recommended this deponent to procure some, if possible, to the first commissioner, colonel Fullarton, and stated that the said colonel Fullarton would have it in his power to be of more service to this deponent than general Picton could be, or

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words to that effect; and this deponent gave (the figure of 1 being written over the word gave, the figure of 2 over the word this, and the figure of 3 over the word deponent, meaning that the word gave, should precede the words, this deponent, and meaning, that the said John Sullivan gave the said Frederick J. Lynch) "as a reason for such recommendation, that in all probability general Picton would be ordered to return to England before six months, as colonel Fullarton was instructed to investigate the then past conduct of general Picton in Trinidad. And this deponent further maketh oath and saith, that he expressed his surprise on his arrival in this colony in the month of March 1803, that it was not generally known or understood, that the said colonel Fullarton had such instructions, the said John Sullivan having mentioned the circumstance to this deponent as a stranger, and not in a confidential manner, which induced this deponent to relate the substance of the conversation herein-before mentioned immediately after his arrival in this island, and several times since. Frederick J. Lynch, M. D. Sworn at the Port of Spain aforesaid, this 15th day of July, before me, John Nihell, chief justice and judge of the Consulado." And in which said libel was then and there contained, immediately after the said supposed copy of the said supposed affidavit, to the effect following, that is to say, "Here is a gentleman of the most respectable character, of the first order in the learned professions, and a man who, as he has asserted elsewhere, is 'neither interested in the cause of general Picton, or of colonel Fullarton,' stating what? 'That in all probability, general Picton would be ordered to return to England before six months, as colonel Fullarton was instructed to investigate the then past conduct of general Picton at Trinidad!!' The right honourable John Sullivan, then under secretary to lord Hobart, makes this assertion in or about the month of November 1802, before the commissioners had sailed for Trinidad:" and in another part of which said libel, was then and there contained to the effect following,

that is to say, "and you, Mr. Sullivan, told this gentleman, either before the commission had sailed, according to Mr. Fullarton's book, or a very few days afterwards, 'that colonel Fullarton was instructed to investigate the past conduct of colonel Picton.' Let me ask you, Mr. Sullivan, by whom was Mr. Fullarton so instructed? I have a right, Sir, to ask you this question. And I do now, in the face of your country, call you to the bar of the English nation, and I do demand of you, as a matter of right, which you are bound as a gentleman and a man of honour to answer, I do say, I have a right to demand of you by whose authority was Mr. Fullarton instructed or commissioned." And in another part of which said libel, was then and there contained to the effect following, that is to say, "In the name of the British empire, in the name of the army that supports, serves, and sheds its blood for that empire, in the name of every thing honourable, just, and fair, do I call upon you, John Sullivan, esq. to avow the author of those secret instructions: you must, Sir, now come forward. This business shall no longer be overlooked or forgotten. While I live, and have a pen or a tongue, you shall not escape investigation or notice. I will take you from your hiding place or your protection, be it where or who it may, and summon you as an officer and a gentleman, to avow your author for those private instructions. The task, I know, is Herculean; but I will endeavour to drag the Cacus from his den. It is in vain Mr. Sullivan, to sophisticate about the business; a disavowal on your side is totally and utterly impossible, entirely incredible. You, Sir, I am satisfied will never think of it. Dr. Lynch, I state, is anxious and ardent to re-assert and corroborate his affidavit at the bar of a British court of justice; nothing therefore but an open, manly, unqualified avowal of the author of those private instructions will satisfy the nation." And in another part of which said libel was then and there contained, among other things, to the effect following, that is to say, "I blame and accuse you, in the face of your country, and before that body of men, the root and source of whose honour and reputation you have attempted to undermine and destroy forever, by secretly, insidiously, and without any just cause, presuming to circulate a report, for which you had no right or legitimate authority, no honest or honourable pretext for circulating or insinuating. This, Mr. Sullivan, is my charge against you, and you will now clear yourself before God and your country as well as you can. That you have acted upon this declaration it is almost impossible for me even to know. I do not say you have, because I cannot prove it. But if you have really acted upon it, surely I am well entitled to say, In what language shall I address 'so black and cow-

ardly a tyrant?' I am well entitled to say, and I do say to you, Mr. Sullivan, that if you have acted upon your declaration to Dr. Lynch, you are not only one of the most dangerous men in the kingdom, but that you add one to the list of the most disgraceful and atrocious qualities in the long and black catalogue of human vices, I mean a dark and cowardly malignity; and if you have not acted upon it, even then, Mr. Sullivan, see the sum of your merits;—you sought to ruin a man whom, I believe, you never saw, and who, I am sure, never offered you a slight, or an injury, in thought, word, or deed. Now, Sir, make up your account, and address yourself, not to your fellow man, but to the just, merciful, and beneficent Being who sees, and through his omniscience permits these wickednesses. Ask pardon of that Throne of Justice for an attempt, which, if not nipped in its bud, will canker the life-root, and eat away the cable that moors the vessel of confidence to the pier of state. You, Mr. Sullivan, have sown the seed of discord, you have shot the sharp and barbed arrow of doubt and distrust, you have uncloaked the stiletto, and endeavoured to plunge it to the heart of one of our bravest and most meritorious officers: under a scorching sun, and in the most malignant climate, while every honest energy was awaked, and called forth to uphold the interest, and maintain the honour of the nation, you came behind an officer's back, and you smote him, I tell you Mr. Sullivan, you dug a mine, not for yourself alone, the blast was but partial, colonel Picton survives it—long may he live to snatch the match from the coward hand of every coadjutor in this iniquitous attempt, and to look down with contempt upon the base authors of his sufferings. I have done my part to him; but Mr. Sullivan, before I close, let me inform you, that I have not done with you; whilst I have one pulse of honest ambition beating in my frame, I shall stand up for the British army, for my brethren and companions in arms, and not suffer the honest zeal, the broken-down frame, the care-worn visage of any officer to be surprised, beset, and betrayed, by you, Sir, or by any under or upper secretary. The great and dangerous opportunities which a man has in such a situation as you then filled, of doing incalculable mischief, and, what is worse, of effecting this mischief without almost a possibility of detection, should awaken a well-founded jealousy, and render a rigid scrutiny and severe investigation necessary, into every act that has the least semblance of sinister view or intention from such a quarter. What avails it to the officer, that the government (properly so called) is just, virtuous, and generous? Of what signification even is the consideration of his august sovereign and master? A trap is artfully

“laid, the plot is formed, the newspapers are
 “plied, paragraph succeeds paragraph, quarto
 “follows quarto, every wicked engine is at its
 “dirty work, no stop, no pause, and before
 “any detection or exposition of the infamous
 “conspiracy can take place, reputation is in
 “the dust, and when at length the hour of
 “developement does actually arrive, the
 “worn-out officer is prostrate, a bankrupt in
 “fortune as well as character, and the under
 “secretary remains still a pillar of the state !!!
 “But, Sir, the English nation has lately
 “proved, that no man is too great or too power-
 “ful to escape inquisition or impeachment.
 “It will remain for the higher powers to de-
 “cide, whether your conduct in this declara-
 “tion was just, consistent, and conformable
 “to the honour of your high situation. There
 “is not an officer in the service, from the
 “lowest subaltern to the highest upwards,
 “that is not deeply and vitally concerned in
 “this declaration of yours to Dr. Lynch. I
 “therefore, Sir, tell you, if it shall be found
 “that you have acted on this declaration, Go,
 “Sir, to Mr. Fullarton, ye are fit society for
 “each other; work out your repentance in
 “sackcloth and ashes; seek an asylum where
 “ye may indulge in mutual recriminations,
 “and no longer infect and poison the spring
 “and salient fountain of generous British
 “ardour; leave to the nation that adopted
 “you, both its blessings and inheritance; do
 “not presume to rob it of those magnanimous
 “qualities that guard and adorn it; leave un-
 “impaired and for ever green, its confidence
 “and its generosity; take back with you, to
 “your native seats, the sprigs of this noble
 “tree, and atone for your enormities, by
 “planting, watering, and protecting its infant
 “weakness. Take this double charge upon
 “yourselves if you can, and leave for ever a
 “country that nourished, fattened, protected
 “and honoured you, but the benefits and
 “blessings of which you have *gratefully* re-
 “turned, by an ungenerous, and, I trust, an
 “impotent attempt to degrade and disgrace
 “it—” To the great scandal, infamy, and
 “disgrace of the said John Sullivan; in con-
 “tempt of our said lord the king and his laws,
 “to the evil and pernicious example of all
 “others, and against the peace of our said lord
 “the king, his crown and dignity.

Second Count.—That the said Edward
 Alured, being a person of such wicked and
 malicious temper and disposition as aforesaid,
 and devising, contriving, and intending to de-
 fame, asperse, scandalize and vilify the cha-
 racter of the said John Sullivan, on the said
 first day of May, in the forty-sixth year aforesaid,
 at Westminster aforesaid, in the county
 aforesaid, with force and arms, unlawfully
 and maliciously, wickedly and scandalously did
 publish and cause to be published a certain
 other infamous, scandalous, and defamatory
 libel, then and there containing therein, the
 following scandalous, malicious, and defama-
 tory matter, of and concerning the said John

Sullivan, that is to say “I blame and accuse
 “you, in the face of your country, and before
 “that body of men, the root and source of
 “whose honor and reputation you have at-
 “tempted to undermine and destroy for ever,
 “by secretly and insidiously, and without any
 “just cause, presuming to circulate a report,
 “for which you had no right or legitimate au-
 “thority, no honest or honorable pretext for
 “circulating or insinuating—” To the great
 scandal, infamy, and disgrace of the said
 John Sullivan, in contempt of our said lord
 the king and his laws, to the evil and pernicious
 example of all others, and against the
 peace of our said lord the king, his crown, and
 dignity.

Third Count.—That the said Edward
 Alured, being a person of such wicked and
 malicious temper and disposition as aforesaid,
 and devising, contriving, designing and in-
 tending, to defame, asperse, scandalize, and
 vilify the character of the said John Sullivan,
 on the said first day of May, in the forty-
 sixth year aforesaid, at Westminster aforesaid,
 in the county aforesaid, with force and
 arms, unlawfully and maliciously, wickedly
 and scandalously did publish, and cause to be
 published, a certain other infamous, scan-
 dalous, and defamatory libel, then and there
 containing therein the following scandalous,
 malicious, and defamatory matter, of and
 concerning the said John Sullivan, that is to say,
 “That you have acted upon this declaration
 “it is almost impossible for me even to know.
 “I do not say you have, because I cannot
 “prove it. But if you have really acted upon
 “it, surely I am well entitled to say, in what
 “language shall I address ‘so black and
 “cowardly a tyrant?’ I am well entitled to
 “say, and do say to you, Mr. Sullivan, that if
 “you have acted upon your declaration to Dr.
 “Lynch, you are not only one of the most
 “dangerous men in the kingdom, but that you
 “add one to the list of the most disgraceful
 “and atrocious qualities in the long and black
 “catalogue of human vices, I mean, a dark and
 “cowardly malignity; and if you have not
 “acted upon it, even then, Mr. Sullivan, see
 “the sum of your merits, you sought to ruin
 “a man, whom, I believe, you never saw, and
 “who, I am sure, never offered you a slight
 “or an injury, in thought, word, or deed—”
 To the great scandal, infamy, and disgrace of
 the said John Sullivan, in contempt of our
 said lord the king and his laws, to the evil and
 pernicious example of all others, and against
 the peace of our said lord the king, his crown
 and dignity.

Fourth Count.—That the said Edward
 Alured, being a person of such wicked and
 malicious temper and disposition as afore-
 said, and devising, designing, contriving, and
 intending to defame, asperse, scandalize, and
 vilify the character of the said John Sullivan,
 on the first day of May, in the forty-sixth
 year aforesaid, at Westminster aforesaid, in
 the county aforesaid, with force and arms, un-

lawfully and maliciously, wickedly and scandalously, did publish, and cause to be published, a certain other wicked, infamous, scandalous, and defamatory libel, then and there containing therein the following scandalous, malicious, and defamatory matters of and concerning the said John Sullivan, that is to say, "Now, sir, make up your account, and address yourself, not to your fellow man, but to the just, merciful, and beneficent Being, who sees, and through his omniscience permits these wickednesses; ask pardon of that throne of justice, for an attempt, which, if not nipped in its bud, will canker the life-root, and eat away the cable that moors the vessel of confidence to the pier of the state. You, Mr. Sullivan have sown the seed of discord, you have shot the sharp and barbed arrow of doubt and distrust, you have uncloaked the stiletto, and endeavoured to plunge it to the heart of one of our bravest and most meritorious officers"—To the great scandal, infamy, and disgrace of the said John Sullivan, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity.

Plea—Not Guilty.

Upon which issue is joined.

COURT OF KING'S-BENCH,

EASTER TERM, 47th Geo. III. A. D. 1807.

[On defendant's affidavit, stating reasons for further postponing trial, on account of the absence of a material witness, Dr. Lynch, a rule to show cause had been granted.]

Mr. Garrow.—My lords;—This is a rule, obtained by my learned friend Mr. Marryat on the part of the defendant colonel Draper, to show cause why this trial should not be postponed on account of the absence of a material witness, Dr. Lynch of the Island of Trinidad.

This information was ordered to be filed in Michaelmas Term last, against colonel Draper, for a libel on Mr. Sullivan; and notice was given of trial at the sittings after that Term. The present is the third application that has been made to your lordships for the purpose of putting off this trial; and it will be necessary that I should lay before the Court, the several facts which are to be found in the affidavits that have been made upon this occasion.

The prosecutor, Mr. Sullivan, is placed in a very extraordinary and painful situation: he must necessarily wish that there should be an end of a prosecution of this sort, as early as it is consistent with the purposes of justice, because this prosecution is attended with the publication of libels daily. At the

same time he wishes that it should not be thought that he desires to take the defendant by surprise, nor does he wish to deprive the defendant of the benefit of one single witness that can any where be met with, who can in the smallest degree contribute to the safety of the defendant. I stated before, that this is the third application that has been made to the Court to postpone the trial of this cause. The first application on the part of the defendant, was made in Michaelmas Term last, stating, that Dr. Lynch, a person who resides at Trinidad, was a material witness for the defendant, and that he had reason to expect him in England, to be present at the trial, but not in time for the trial agreeably to the notice that had been given.

Afterwards, another application was made to this court, for the same purpose, stating, that this was an information for a libel, which had been published in this country, and suggesting that Dr. Lynch had, previous to that time, maintained a conversation with Mr. Sullivan, which Mr. Sullivan had denied. The Court expected that some farther information would have been given by Dr. Lynch. And then colonel Draper stated, that he had reason to expect that Dr. Lynch would arrive in this country. Some facts were stated by a captain Holmes, secretary to general Hislop the governor of the Island, and some suggestion was made of some packet boat that passed between the Island of Tortola and Trinidad having been taken, and that it was possible Dr. Lynch might have been on board, or at least some despatches from him, from which they might have learned when the doctor was to be expected.

I now come to the application which is now made to your lordships, and which is founded on the affidavit of this Mr. Holmes. And I think he states to your lordships, not only no reason why the Court should postpone the trial of this cause on account of the absence of Dr. Lynch, but I think it is extremely probable, from what he states, that Dr. Lynch will never arrive in this country for the purposes of this cause.

In order that there may be no dispute between my learned friend and myself about captain Holmes's affidavit, I shall not state it, but read it to the Court, and then it will be impossible for my learned friend to say I have misstated his affidavits. [He reads it.] And therefore if Dr. Lynch had intended to come over to this country, he might have come over before now. The person who undertook to procure his attendance has come over, and Dr. Lynch had the same means of coming here; and certainly Dr. Lynch is not a person requiring a convoy. The secretary to the governor has arrived, who was obliged to go and obtain leave of absence in the first place. Dr. Lynch is not under that necessity, nor is he a person requiring a convoy.

He states that he firmly believes that Dr. Lynch will take the first opportunity of coming

to this country. Then the defendant states that this is an information filed against him; that he is not guilty; and that he is advised by his counsel, and verily believes that Dr. Lynch is a material witness, without whose evidence he cannot safely go to trial.

My lords, I have only to say in this case, that the prosecutor submits himself entirely to the Court. Whatever your lordships wish him to do, he is perfectly ready to do. If the Court think there is any ground for further delay after that which has already taken place, (and especially when it is so extremely difficult to see how it is possible that this person, if he were in this country, could be a material witness, or indeed how he could be examined at all), let the rule be made absolute. But this affidavit does not lay open any one reason why Dr. Lynch should be expected in this country. If however the Court is of another opinion, I entirely submit on the part of the prosecution.

Mr. Justice *Lawrence*.—Is there any reason, from the course of the trade, to expect, that there may be arrivals from that quarter between this time and the sittings after next term?

Mr. *Garrow*.—Not as far as it is intimated to me, my lord.

Mr. *Marryat*.—They begin to gather in their crops in January. I do not mean the inhabitants of that island, but those who live at no great distance. And it depends afterwards on the appointment of convoy when they will arrive in this country. That is matter of mere accident.

Lord *Ellenborough*.—The interval between the present time and the sittings after Trinity Term is so short, that perhaps it may be as well to give them that interval: we shall certainly expect that the defendant will then be ready to proceed to trial. The Court will allow that interval, at the expiration of which we shall certainly expect that the defendant will be ready. The calls of justice indeed require it.

Mr. *Garrow*.—My lords, I understand the usual time of convoy is the 17th of April.

Mr. *Marryat*.—If they sailed at that time, they probably will be here by the sittings after Trinity Term.

Lord *Ellenborough*.—It is a voyage of two months. That just would give them time to arrive at the end of Trinity Term. A fortnight more perhaps, would carry it beyond the time.

Mr. Justice *Lawrence*.—Though captain Holmes states in his affidavit that he did not give Dr. Lynch notice he was going to Barbadoes, he does not say why he did not give him notice. He does not say he was at a distance from the island, and therefore could not.

Lord *Ellenborough*.—It begins to become

very suspicious whether Dr. Lynch will come at all; however we will give them that period.

[Trial postponed till the Sittings after Trinity Term.]

COURT OF KING'S BENCH, WESTMINSTER.

June 29, 47 Geo. III. A. D. 1807.

NAMES OF THE JURORS.

Special Jurors.

John Bate, of Russell-square.
Frank Cape, of Nottingham-place.
George Young, of Goodge-street.
William Vale, of Montague-place.
Daniel Chinn Bullock, of Lisson-Grove.
John Hooper, of Bentinck-street.
William Weston, of Weston-place.
George Allen, of Wigmore-street.
David Nicholls, of Nottingham-place.
William Horton, of Highbury, Esquires.

Talesmen.

Francis Revel, of Russell-street, Corn-Chandler.
Godfrey Rodwell, of James-street, Linen-Draper.

Counsel for the Prosecution.

Mr. *Attorney General* [Sir Vicary Gibbs knt. afterwards Lord Chief Justice of the Common Pleas]:

Mr. *Garrow* [afterwards a Baron of the Exchequer]:

Mr. *Sergeant Bayley* [afterwards a Judge of the King's-Bench]:

Mr. *Fell*.

Solicitors.—Messrs. *Frogatt, Robson, and Lightfoot*, Castle-street.

Counsel for the Defendant.

Mr. *Dauncey*.

Mr. *Marryat*.

Mr. *Gurney*.

Solicitor.—Mr. *Miller*, of Red Lion-square.

Agent.—Mr. *Few*, of Great James-street, Bedford-row.

Mr. *Fell* opened the Pleadings.

Mr. *Attorney General*.—Gentlemen of the Jury; I wished my learned friend, who has opened this information, to state to you fully and accurately the offence with which the defendant is charged, in order that from the mere hearing of it, you might perceive the inveterate rancour of the writer. Without any comment on the libel, without any inquiry into the circumstances under which it was published, you must, I am sure, merely from having heard it read, clearly pronounce upon the character of the writer. A man who, unconnected with the transactions to which he

alludes, unacquainted with those of whom he speaks, not pretending to be a participator in those injuries which he did not believe but affected to believe others had suffered, steps forward from the ranks, as if merely to distinguish himself in the list of libellers, and taking an opportunity of laying his slanders before the public, is now brought before a jury to answer for such his offence.

Gentlemen, the book which he has published, he has adorned, I perceive, with the following motto :

"O magna vis Veritatis! quæ contrà hominum ingenia, calliditatem, solertiam, contràque fictas omnium insidias faciliè se per seipsam defendat!"

He shall to day learn the truth of that motto. He shall learn, that truth is powerful and will prevail. He shall learn, that his arts and snares cannot affect the man whose character stands on the basis of probity and truth. He shall learn to-day, that Mr. Sullivan, notwithstanding, I will not say the *ingenia*, but the pretended *ingenia* of this gentleman, which he sought an opportunity of displaying to the public; notwithstanding the *calliditas* that belongs to him, notwithstanding his *solertia*, for diligent he has been in his slander, notwithstanding the *fictæ insidiæ* with which he has endeavoured to injure the character of the prosecutor—notwithstanding all these arts, he shall find that he will be himself laid in the dust, while Mr. Sullivan's character, which he sought to calumniate, will remain pure and unsullied.

Gentlemen, in order to render the nature of this slander intelligible, it is necessary that I should go into some explanations, which I shall do very briefly. After the manner in which the libel has been read, my task will be extremely short.

In the year 1797, the island of Trinidad was surrendered to the British army then commanded by general Abercrombie. General Abercrombie, on leaving the island, entrusted the government of it to the hands of governor Picton, and I think that on May 26th, 1801, the government of that island, which had been so delivered by general Abercrombie into the hands of general Picton, was confirmed by his majesty.

The island was full of turbulent and mutinous persons, who were disposed on every occasion that presented itself, to raise disturbances; and it had therefore been necessary for the government to act with a strong hand, and this of course excited some murmurs and complaints. His majesty, in his wisdom, thought it right to send out a commission, appointing three persons to take upon them the government of Trinidad. These three persons were colonel Fullarton, general Picton (the then governor of the island), and commodore (now sir Samuel) Hood. They were appointed commissioners to govern the island. General Picton was upon the spot, and the other two, colonel Fullarton and commodore Hood,

joined him there. It happened unfortunately that, in the execution of the powers entrusted to them, differences arose among the commissioners themselves. General Picton, disgusted with some things that passed there, misapprehending perhaps the conduct of those with whom he was acting—(they ought to have acted in concert)—asked to resign his office of commissioner. His resignation was accepted. He returned to England, and colonel Fullarton also returned home. In this country, charges were exhibited against general Picton, which were heard before the privy council; and, to the astonishment of Mr. Sullivan, while these charges were depending before the privy council, it appeared, that a letter had been sent by a Dr. Lynch to Mr. Gloster, the attorney-general of Trinidad, which was transmitted to the privy council, stating that either before, or at the time when the commissioners sailed from hence for fulfilling the purposes of that commission, Mr. Sullivan, in a conversation with Dr. Lynch, had declared to him, "that general Picton probably would not remain many months governor of Trinidad, for that colonel Fullarton was directed to investigate the conduct of general Picton, and the result, in all human probability, would be, that general Picton would be deprived of the government of the island;" and it appears that Dr. Lynch afterwards made an affidavit that such a conversation did pass.

The surprise of Mr. Sullivan when this first came to his knowledge may be more easily conceived than expressed. He knew that nothing like this had ever taken place. He knew that he could refer to every thing connected with the government of this colony, and that it was impossible that any such conversation could have taken place;—that he could refer to the earl of Buckinghamshire, at that time the secretary of state for the colonial department; and that it was impossible from the circumstances of the transactions, that Mr. Sullivan could have given such instructions, he having all the papers relative to this business, which had all passed through his hands as under-secretary to lord Hobart, and therefore he was able to know with certainty all that had passed. Mr. Sullivan was thunderstruck at hearing such an imputation brought against him; and took the obvious means of proceeding in this business: he desired that he might be permitted to attend the privy council; he requested that he might be sworn, and that an account might be given by him on oath of what actually did pass. The imputation against him was, that for the purpose of assisting colonel Fullarton, and undermining general Picton (general Picton being then in the possession of the government of Trinidad, and colonel Fullarton going out as one of the three commissioners), he had covertly and secretly instructed colonel Fullarton to inquire accurately and minutely into the conduct of general Picton, and that he had insinuated beforehand, that upon this inquiry

such things would be found against him as to cause him to be deprived of the government in a very short time.

That was the charge as to which Mr. Sullivan begged he might be examined on oath. He attended. He was sworn, and examined upon oath before the privy council, general Picton being present, whom it imported more than any man to extract the truth from Mr. Sullivan; and general Picton himself had it in his power to put any question to Mr. Sullivan that he thought might extract the truth of that transaction. He was asked, whether at any time, and under any circumstances, he had given to colonel Fullarton any private instructions for inquiring into the conduct of general Picton. He denied it. And not only did he, speaking from his memory, deny it, but he states, that he had in his office the means of referring to all the documents, to all the instructions that had been given on the subject. He positively swears that none had been given to colonel Fullarton, but those that were contained in the written documents: that he had referred to them all, and he positively swore (as the truth was) that he had never hinted or intimated to colonel Fullarton that general Picton's conduct was to be inquired into by him. He stated (as the truth was), that he maintained during that time a private correspondence with colonel Fullarton, that he had an opportunity of referring to that, and from that also he was enabled, with confidence and certainty to pronounce, that no such thing had ever passed.

If I were to indulge the solicitude of Mr. Sullivan on this subject, I should state all the private correspondence, all the instructions that Mr. Sullivan actually did give. I should show that he was constantly impressing on the mind of colonel Fullarton the expediency of conciliation, of living on the best possible terms, and of rendering mutual assistance to each other, if I were, as Mr. Sullivan wishes me, to produce these documents in evidence; but I know I should be interrupted by the noble lord on the bench, I know the prosecutor, whatever may be his own wishes on the subject, cannot be suffered to produce certain letters in proof, to show that what is charged by this letter is not true. And though it is a natural solicitude which Mr. Sullivan feels on the occasion, yet I have told him, it is not competent to me to offer such evidence. I shall not go through the ceremony of offering that which must be rejected. I perceive I have the assent of the noble and learned lord for the propriety of what I am now stating. But I have to state not only that Mr. Sullivan, but the earl of Buckinghamshire was examined before the privy council:—I believe I am incorrect in what I have now stated, the earl of Buckinghamshire was not examined, but he tendered himself for examination in the presence of general Picton; and, what is stronger than any examination, he was not examined, *only because general Picton wished*

not to examine him. For he was satisfied on that subject, and he declared on the same occasion, that nothing which he had himself said—

Lord *Ellenborough*.—I am sorry to interpose, but if this evidence cannot be given, to detail it distracts the attention of the jury, and may produce a counter-statement.

Mr. *Attorney General*.—I am very much obliged to your lordship. I have merely introduced these observations to show, that though the earl of Buckinghamshire tendered himself for examination, he was not examined, because general Picton did not desire it; and general Picton declared that though he had in his Address alluded to Mr. Sullivan, yet he was perfectly satisfied with Mr. Sullivan's solemn declaration upon oath.

Now, after general Picton himself, who was most nearly interested in this affair (in which the present defendant had no concern), had declared himself to be fully satisfied with Mr. Sullivan's assertion, one would have thought that no one could be found who would unnecessarily, for the purpose of injuring a man's reputation, and where no good could arise, come forward and repeat it. What will you say of that man, who, after the examination of Mr. Sullivan before the privy council denying it on oath, and after the declaration of general Picton himself, that he was satisfied with Mr. Sullivan's account of the transaction,—what will you think of the man, who comes forward and republishes the same charge against Mr. Sullivan, representing it as true? And supposing this fact, that Mr. Sullivan had denied it on oath, and that general Picton was satisfied with his denial of it; what shall we say of that man's love of truth, who brings forward a charge of this sort, which at the time when he ushered it into the world was within his own knowledge a most scandalous slander? Gentlemen, I have been present at the trial of many libels, and I have heard many aggravated cases stated to juries, but I think, in the whole course of my experience, which is not now very inconsiderable, I never met with any that resembled the present;—none like the imputation which is here cast upon Mr. Sullivan—wholly without foundation, and not only so, but the author of this slander knew it was without foundation: knowing that it had been contradicted, and that it had been contradicted to the satisfaction of him whom it most imported, he yet sends this libel again into the world, and does not accompany it with the contradiction of the person who was slandered, and the expressed satisfaction of him whom it most imported to inquire into it.

Gentlemen, I feel I have consumed too much of your time indwelling on that, which, after all, is not the object of your inquiry. You are called upon to say, whether this be or be not a libel (on that I am sure you will entertain no doubt), and whether the defendant be or be not the publisher.

We cannot be permitted to go into the truth or falsehood of the libel. It may, however, be of importance to the defendant in a subsequent stage of this business, to endeavour to show, that what he has stated is true. If he can show its truth, though that cannot work his acquittal to-day, yet it certainly will hereafter mitigate his punishment. In that point of view, it may be material to him; and because it is material to him, the means, at least, of effecting it shall not be withheld from him.

I am to prove to-day, that the earl of Buckinghamshire was at that time secretary of state for the colonial department. I could do this by producing the instrument which constituted him secretary of state. But I shall not content myself with that. The earl of Buckinghamshire knows what instructions were given to colonel Fullarton. He knows whether Mr. Sullivan did or did not himself give any instructions on that occasion. He knows on what grounds, and under what circumstances, colonel Fullarton accepted the commission. *I shall call him to prove his own appointment*, and he shall be ready to answer any question on his cross-examination, that may be put to him by the counsel for the defendant, as to whether in point of fact there was any foundation for the charge brought against Mr. Sullivan.

It may, however, be said, that this proof will not satisfy the full measure of justice; that the earl of Buckinghamshire may be ignorant of the insidious instructions given by Mr. Sullivan to colonel Fullarton; that the earl of Buckinghamshire may have acted an honourable part, and Mr. Sullivan an insidious one without the knowledge of the earl of Buckinghamshire. I must prove that Mr. Sullivan was under secretary of state. I could prove that by the earl of Buckinghamshire and by others; but I will not content myself with that proof. I will not withhold from the defendant any opportunity of mitigating that sentence which is afterwards to be pronounced against him, which mitigation will certainly be produced, if he can show that the charge against Mr. Sullivan is true. To prove the fact of Mr. Sullivan being under secretary of state, *I shall call Mr. Sullivan himself*. Not that I want him, but I will not let the defendant be without him. He shall have an opportunity to cross-examine him. I know they might introduce Mr. Sullivan as the defendant's own witness, but that might lay them under some degree of embarrassment. It might fetter them a little in the mode of examination. They might not be able to put leading questions. They might not be able to extract the truth. I will give them every advantage. I will call him as *my witness*, and will expose him to the strictest and severest cross-examination by the learned counsel for the defendant. And I defy my friend to extract from Mr. Sullivan any one fact, that goes in the slightest degree

to countenance the slander his client has disseminated.

Then, gentlemen, when I have proved this, you will have to pronounce, First, whether this be a libel; and next, whether the defendant, colonel Draper, was or was not the author of it.

As to the first question, I refrain from entering into any argument concerning it: you have heard it read. As to the second, it is quite unnecessary for me to say any thing. If I prove beyond all doubt that colonel Draper is the author of it, it will be your duty, under his lordship's directions, to find the defendant guilty: and the Court will afterwards pronounce a punishment adequate to the nature of the offence.

EVIDENCE FOR THE PROSECUTION.

The Right Honourable Robert Earl of Buckinghamshire sworn.—Examined by Mr. Garrow.

I will trouble your lordship to state, whether you were one of the principal secretaries of state on May 1st, 1802?—I was.

Did your lordship so continue till May 31st, 1804?—I did.

I believe your lordship's title then was lord Hobart?—Yes.

[The commission was here put in, and read by Mr. Lowten; it was dated the first day of January, in the 41st year of the King, 1801.]

Mr. Sergeant Bayley.—On the 1st day of May, 1806, as your lordship sees, the publication is laid in the information.

John Emmett sworn.—Examined by Mr. Sergeant Bayley.

You are clerk, sir, I believe, in the Petty-bag-office?—Yes, sir.

Have you got a copy of the record of the commission of general Picton, appointing him governor of the Island of Trinidad?—I have.

Produce it, will you?—

[The Witness produced it.]

Lord Ellenborough.—What is the date of it?

Mr. Lowten.—My lord, the date of it is June 1st, 1801. [Read by Mr. Lowten.]

Mr. Sergeant Bayley.—Mr. Emmett, have you also got a copy of the patent appointing these three gentlemen joint commissioners; sir Samuel Hood, governor Picton, and colonel Fullarton?—I have.

Produce it, will you?—

[It was produced and read by Mr. Lowten. It was tested October 13th, in the 42nd year of the reign of king George the 3rd, 1802.]

Mr. Gurney.—By what seal did it pass?—It passed by the privy seal.

Mr. Sergeant Bayley.—Is not that the sanction to put the great seal to it?

Lord *Ellenborough*.—This is enrolled in the Petty-bag-office in the Court of Chancery.

Mr. *Lowten*.—It is a patent of the 42nd year of the king.

Witness.—There is no other title to the roll.

Lord *Ellenborough*.—Look farther on.

Witness.—On the 13th of October, certain letters patent of our lord the king under the great seal—

Mr. Sergeant *Bayley*.—Is there any part of that, to show it was under the great seal?—That is a copy of that which is under the great seal—

That is an enrolment of that which is under the great seal; then the original is under the great seal?—Yes.

Is that which appears on it a sanction for putting the great seal to it?—It is an authority for putting the patent under the great seal.

Mr. *Dauncey*.—Do I understand you to say, that that instrument is the authority in consequence of which the great seal may be put to these letters supposing them to have passed? It is a previous step to put the privy seal to the patent, and that appears to be an authority to put the great seal to it?

Mr. *Attorney General*.—No. He did not say that.

Lord *Ellenborough*.—Are any patents deposited there, but those that are correctly passed under the great seal?—No, my lord.

Lord *Ellenborough*.—The official enrolment of them shows that.

Mr. *Dauncey*.—The great seal may or may not have been put to that.

Lord *Ellenborough*.—It would not be enrolled there, unless the great seal were put to it.

Mr. Sergeant *Bayley*.—It was a previous step to the putting the great seal.

Lord *Ellenborough*.—In order to authorize the lord-chancellor to put the great seal, there is a writ of privy seal.

Mr. *Dauncey*.—Yes, my lord, I had conceived this was no evidence that the great seal had ever been put to it.

Lord *Ellenborough*.—The enrolment is. It shows it must be under the great seal.

Mr. *Attorney General*.—That authorizes the lord-chancellor to put the great seal to that instrument for which there is a writ of privy seal.

Mr. *Dauncey*.—That is only the authority for putting it there. *Non constat* it ever was there.

Lord *Ellenborough*.—You see the place where it was found.

Mr. *Dauncey*.—Your lordship does not think it is necessary to produce the great seal itself?

Lord *Ellenborough*.—Certainly not. The enrolment is to dispense with such a production.

Mr. *Garrow*.—Will you read these, Mr. *Lowten*?

[They were directed to William Fullarton, esq. Thomas Picton, esq. and to Samuel Hood, esq. captain of the royal navy, appointing them commissioners. Read by Mr. *Lowten*.]

John Saunderson, esq. sworn.—Examined by Mr. *Garrow*.

I believe, sir, in May 1802 you resided in the Island of Trinidad?—Yes, sir.

At that time who was governor?—General Picton.

He resided there in that capacity. How long did he continue to reside there in that capacity?—Till some time in 1803.

Mr. *Garrow*.—That satisfies the allegation in that respect.

The Right Hon. *John Sullivan* sworn.—Examined by Mr. *Attorney General*.

Mr. *Attorney General*.—Mr. *Sullivan*, were you under-secretary of state under the earl of Buckinghamshire, at the time this commission went out?—I was.

Mr. *Attorney General*.—That is all I ask Mr. *Sullivan*. If the other side would ask him any question, I present him for their cross-examination.

Lord *Ellenborough*.—From what time to what time were you under-secretary under the earl of Buckinghamshire?—I was under-secretary from the month of May 1802, to the same month of May 1804. From May 1801—I made a mistake.

Mr. *Attorney General*.—Till May 31st, 1804, I believe?—I really cannot say to the day.

You were under-secretary of state from May 1801 till what time, Mr. *Sullivan*?—Till the month of May 1804. The exact time of delivering up the key of office I cannot speak to, but only to the month. I cannot tell the day.

You cannot tell the day?—I cannot tell the day.

Lord *Ellenborough*.—During all lord Buckinghamshire's time in the office?—Yes, my lord, during all his time.

Lord *Ellenborough*.—Then you can easily have it ascertained. It was during the time lord Buckinghamshire held this office.

[The Witness was not cross-examined.]

Mr. *John Budd* sworn.—Examined by Mr. *Garrow*.

Mr. *Budd*, I believe you are a bookseller?—Yes.

In Pall Mall?—Yes.

Will you be so good as to look at that book [handing it over to him] and tell me whether you published it?—[After looking at it] Yes.

Who applied to you to publish that book?—Colonel Draper.

Was that before it was printed?—It was during the time it was printing.

What answer did you make to his first application?—I consented to publish it.

Did you know its contents, or had you any conversation with him respecting its contents or import?—I had not seen it at that time.

Had you any conversation with him on that book, or did you undertake, without any qualification, to publish any book that he should bring to you?—No, sir; I said, at his first application, if there was nothing libellous in it I should publish it.

You said, you hoped there was nothing libellous in it, and if there was not, you had no objections to publish it?—Yes, sir.

What answer did colonel Draper make to that observation?—He said, certainly not to his knowledge.

Not what?—Nothing libellous. That his name would be to it, and that there was nothing libellous in it to his knowledge, or something to that effect.

Did you see colonel Draper while the work was in progress? while it was in the course of printing?—It was nearly finished.

That is not an answer. After you had undertaken to publish it, you saw the defendant, while it was in the course of printing?—I believe it was in the course of printing.

Did you ever go to the defendant's house, before you published the book?—I did.

For what purpose did you either go to him, or he call on you? Were you to print it?—No, I was not.

Who was to print it?—Mr. Jaques.

How long was it after the first application to you by colonel Draper, before this book, importing to be a publication, was sent?—A very few days. I do not know the exact time.

Did you see any part of the manuscript?—Yes, I did.

Where?—In colonel Draper's own house.

How often were you at colonel Draper's house?—I cannot state that, several times; I do not know how often.

What quantity of the matter (I believe you call it) might you have seen in manuscript?—I saw the whole of it. I did not read it. To the best of my knowledge it was the whole.

Was the manuscript in colonel Draper's hand-writing?—Yes, it was, to the best of my knowledge.

Was it advertised?—Yes, it was.

By whose directions?—By colonel Draper's directions.

At whose expense was it advertised?—The expenses are always deducted from the sale.

Then at whose expense was this publication advertised?—At colonel Draper's expense.

Was it repeatedly advertised?—It was.

Lord *Ellenborough*.—I should see the advertisements.

Mr. *Garrow*.—My lord, I am not asking their contents. [*To the Witness*] Had you

any particular instructions from colonel Draper respecting the advertising it?—No, I had no particular instructions, but to advertise it in the newspapers.

And you did it accordingly?—Yes.

Have you accounted with colonel Draper yet?—I have not.

Lord *Ellenborough*.—Then he gave orders for the advertisements?

Mr. *Garrow*.—To be sure, my lord. Pray, sir, had you any instructions from colonel Draper to send it to any particular persons or places?—I do not recollect sending it to any.

I did not ask that. I ask you, sir, whether you were directed by colonel Draper to send any of these to any particular person or place?—I think not, sir.

Will you swear you were not?—Yes, sir, to the best of my knowledge.

Did you send any to any particular person or place?—I do not think I sent one.

Do you know of any being sent by the directions of colonel Draper, or by himself, to any particular person?—I think there were. They were not sent from my house, but some were done into packages, and sent over to colonel Draper's house.

What number were done up in packages and sent to his house?—There might be fifty; or there might be more.

And were these done up by the directions of colonel Draper?—Yes, sir.

Did you of your own knowledge know where they were sent to, or to what description of persons?—No, sir.

Where were they to be sent to?—To his own house.

Were they packed up?—They were packed up, but not directed.

Did he tell you where they were to be sent, or to what description of persons?—No, I have no recollection of that at all.

Do you remember the time when an application was made to this Court for leave to file an information against colonel Draper?—Yes.

I do not know whether you made an affidavit at that time?—I did.

Perhaps an application had been made to you by colonel Draper?—Yes, it had.

Had you any conversation with him, respecting the continuing or discontinuing the sale of the pamphlet, or the advertising of the pamphlet? Recollect yourself, Mr. Budd. I shall repeat my question, if you do not understand it: Whether you had any conversation with colonel Draper as to continuing or discontinuing the sale of the pamphlet, or the advertising of the pamphlet?—I think I had instructions to continue the sale.

Have you any doubt of that, sir?—I have.

Endeavour to recollect yourself, and state what the conversation was, that passed between you and colonel Draper?—I have no recollection that I was not to sell it, but I rather think on the contrary I was to sell it.

Now, in fact, you sold it. You must be in a condition to say, whether you had any instructions or not to sell it, and I expect a distinct answer to my question?—I think I had instructions.

Have you any doubt of it? Do you remember seeing colonel Draper after making the affidavit?—I saw him.

What conversation passed between you and him respecting the publication or prosecution?—I certainly did see him.

Then tell us what did pass between you?—I continued the sale afterwards by his instructions, or certainly I should not have sold it.

How long did you continue selling, after the application was made to this Court for an information?—A very few days.

And at length you discontinued it. Did you discontinue it of your own accord, voluntarily, or from an application being made to you by somebody else?—I really think I had an application from Mr. Frogatt, threatening me with a prosecution if I continued selling it.

Possibly Mr. Frogatt might tell you the Court of King's-bench had expressed something on the subject?—I believe so.

Did he tell you it was made the subject of a prosecution, and did you communicate that to colonel Draper?—I did.

What did he say to you on the subject?—He desired me to send them all over to his house.

How many did you then send over to colonel Draper's house?—I cannot tell the number.

Not an hundred?—I do not think it was. There were some that came from the person that did them up, but I do not recollect the number.

What was the number of the edition, seven hundred, or what?—I do not know.

You were the person to sell it and to render colonel Draper an account?—Yes.

The printer and colonel Draper knew the number: You were only to sell those that were sent to you: You were not to dispose of the whole edition. How many did you receive from the printer?—I think five hundred.

Of which about one hundred remained on hand at the stopping of the sale, and these were sent to the colonel's house?—There were more than one hundred.

About five hundred came to you for sale from the stitcher's. After they had been bound up, they afterwards came to you?—Yes.

I wish to know how many came to you?—I sent them over to colonel Draper's house.

Do you mean that you sent them all over to colonel Draper's house?—All, except those that were sold.

How many were sold? one hundred?—There might be one hundred, and something more.

Do you know any sent out to the East Indies?—No, I do not know of any.

None of your own knowledge by colonel Draper?—No.

Mr. John Budd cross-examined by Mr. Dauncey.

Mr. Budd, if I understand you, you had originally instructions to sell this pamphlet?—Yes.

In consequence of an application made to this Court, in a few days after that, you discontinued to sell it?—Yes.

Did you discontinue to sell it by the express directions of colonel Draper?—Yes, I certainly did.

Within a few days after this Court had been applied to?—Yes, sir.

Am I correct in supposing, that within a few days of the time this Court had been applied to, you had discontinued the sale by the express directions of colonel Draper?—Yes I did.

Now, do you mean to say, sir, that between the time that you so received these instructions to discontinue the sale, and the time you had heard of the application to this Court, you had seen colonel Draper more than once?—I am not certain.

But I take you to have said certainly, that you sold according to the directions you had received from colonel Draper; that then an application was made to this Court on the subject, and that in a few days after that application had been made, you received colonel Draper's directions to discontinue the sale?—I believe I applied to colonel Draper—

Mr. Garrow.—Speak out, I cannot hear you.

Witness.—I do think I applied to colonel Draper myself to discontinue the publishing of it.

You had some intimation from Mr. Frogatt?—Yes.

That an application had been made to this Court?—Yes.

On this intimation being so given to you, you communicated to colonel Draper that fact, and received instructions from him not to sell?—Yes, sir.

Only, sir, let us see whether you and I understand the same thing. You have stated, sir, to that gentleman who examined you, that after the application made to this Court, you had received colonel Draper's directions to sell?—Yes, sir.

And you have now stated, that the first intimation to discontinue the sale was from Mr. Frogatt?—Yes, sir.

And on that application being made to you by Mr. Frogatt, you communicated that fact to colonel Draper, and received directions from him not to sell?—Not immediately.

It was when you made the affidavit. Had you seen colonel Draper between that time and the time Mr. Frogatt spoke to you? You

told me, the publication was actually discontinued within a very few days after the application was made to this Court?—Yes.

Is that so, sir?—Yes.

It was discontinued by the directions of colonel Draper?—Yes, sir.

In a very few days afterwards? I only wish to know how the fact really stands. Had you seen colonel Draper at all, after you knew that this Court had been applied to, and before you made to him that communication, which the Court had made to you? When Mr. Frogatt told you, you would be prosecuted if you continued to sell, did you go to colonel Draper?—Yes.

And received from him instructions not to sell?—Not at that time.

When did you first see colonel Draper, after you had seen Mr. Frogatt?—The next morning.

What passed between you then?—I did not receive instructions then not to sell it—not at that time.

Do you mean to say, you received instructions to sell?—Yes, sir.

Mr. Garrow.—He has said so more than once.

Mr. Dauncey.—No doubt, Mr. Garrow, he certainly has. I only want to be certain that I understand his evidence.

[To the Witness.] After you had communicated to colonel Draper, or he had communicated to you, that an application had been made to this Court, he directed you to sell?—Yes, sir.

When, sir? I do not ask whether you did it or not. That is not the point. I wish you would give me the dates correctly?—I cannot give you the correct dates.

It is very important that you should. You had original instructions to sell, and you obeyed them?—Yes, sir.

Now when did you first make this communication to colonel Draper, of your knowledge of the first application being made to this Court?—I recollect colonel Draper, on his returning from this place, I think, calling on me.

Was that the only communication you had with colonel Draper, on the subject?—I had received original instructions from him to sell this book.

And that was the time you first received an intimation from him not to sell?—I had applied to him before, to know whether the sale was to be continued, and I was instructed by him to continue the sale.

Now I want to know, whether that application which you made to him, was after the time when he knew an application had been made to this Court?—He called on me in his way from this Court, and desired me to sell no more, and that I believe was before I had any notice, or before I had seen Mr. Frogatt.

You have told us, that you had, originally, instructions from colonel Draper to sell, and that on that you sold?—Yes, sir.

But you never sold after you received this intimation from colonel Draper not to sell?—No, sir. I did not know the application was made to this Court, till the day colonel Draper called on me. But Mr. Frogatt called on me a week before that, and told me that he had applied to colonel Draper, and mentioned the circumstance to him. I continued to sell, till he (colonel Draper) called on me, and told me he had come from this place, and told me not to sell any more of them.

Did you communicate to him that in Mr. Frogatt's opinion, it was libellous?—Yes, sir, that I communicated to colonel Draper.

You communicated to colonel Draper, that Mr. Frogatt had thought it a libellous publication, and that he had instructions from Mr. Sullivan to prosecute. You had instructions from colonel Draper to withhold the sale, as soon as the application was made to this Court?—I think it was on his return from the court.

After Mr. Frogatt had stated to you that he had instructions from Mr. Sullivan to prosecute, you did sell, but never after colonel Draper had told you not to sell?—No.

Am I stating you correctly?—Yes.

Mr. John Budd re-examined by Mr. Garrow.

I do not know whether you know the distinction between a rule to show cause, and a rule being made absolute?—No.

You have told this gentleman, that Mr. Frogatt had applied to you, and told you, that in his opinion this book was libellous, and that he had instructions from Mr. Sullivan to prosecute?—Yes, sir.

Did you make an affidavit on that occasion, to found the application?—Some time afterwards.

How soon after Mr. Frogatt had told you he had instructions from Mr. Sullivan to prosecute, did you inform colonel Draper you had that information?—The next morning, I think.

It was then colonel Draper ordered you to continue the sale?—Yes, sir.

Did he direct you to continue, or to discontinue the advertisement?—No, sir, he did not give me any instructions with regard to the advertisement.

But he ordered you to sell?—Yes.

What answer did colonel Draper make, when you told him that Mr. Frogatt had called upon you?—I do not recollect what answer he made.

Did he direct you to sell?—Yes, sir.

How many days did you continue to sell?—I suppose it must be a week.

How soon did you, either from the colonel, or by any other means, know that an application had been made to this Court?—I cannot recollect, sir, I am sure.

You continued selling, till colonel Draper called on you, and told you he had just been in court, and from that time you must not go on selling?—Yes, sir.

And it must be a week at least after you had received the orders that you went on selling?—Yes, sir.

Did he tell you what had passed in court?—No.

Of the observations of some of the learned judges, that the sale of the book was still advertised?—No, sir.

How soon after this did he withdraw from you all of the pamphlets, to his own house?—Immediately after the week.

He had left them with you during all the intermediate time?—Yes, sir.

Samuel Tearley sworn.—Examined by *Mr. Sergeant Bayley*.

Tearley, you are clerk to *Mr. Frogatt*?—Yes.

Did you at any time purchase a book at the shop of *Mr. Budd*?—Yes, sir.

Is that the book you purchased?—Yes, sir.

Is it now in the same condition in which it was when you purchased it?—With the difference of my name and place, it is in the same condition.

Mr. Garrow.—*Mr. Lowten*, we must trouble you now to read the libel from the printed book.

Mr. Sergeant Bayley.—You may begin where they desire you, in page 262, beginning with these words: "I have, in page 50, alluded to a transaction of a very extraordinary nature," &c.

[*Mr. Lowten* read on from this passage to page 280, ending with these words, "I have done my duty to my friend, to myself, and to the public."]

Mr. Attorney General.—You may as well go on, *Mr. Lowten*, and read a little farther.

[He read the next paragraph.]

Mr. Attorney General.—My lord, that is our case.

DEFENCE:

Mr. Dauncey.—Gentlemen of the Jury; On this occasion it is my duty to address to you some observations on behalf of the party accused. And this at least I may say, that your time, and that of the Court, has not been unnecessarily wasted by any examination on the part of myself, or by the gentlemen by whom I have been assisted on this occasion. I have consigned to me a task of difficulty, inasmuch as it is of infinite importance to my client that you should form a right judgment on this subject. The accusation that has been made against him has been accompanied with that species of observation which must, of course, be used on occasions like the present, namely, observations which go to show, that the mind of the party accused has intended the injury which he is supposed to have committed. I am not therefore surprised, that observations of that description were made, because I feel it to constitute the essence of

the offence. But I certainly am surprised, from what I have seen in the instructions I have received, that it can by possibility be imagined, that the gentleman for whom I appear before you, could be actuated by any of those motives, which the counsel for the prosecution have attributed to him.

Gentlemen, it would appear from that statement, as if my client, colonel Draper (totally unconnected as to interest with the parties between whom, unfortunately, disputes had existed) had, in the language of the attorney-general, wantonly stepped forward from the ranks, and mixed himself up with that, which no honour or regard for them called on him to interfere with. Undoubtedly in that respect it would appear, by reading the whole pamphlet which is the subject matter of the present discussion, so far as it can be considered as evidence in this case—that he knew the parties. He well knew and was well known to one of the parties in that unfortunate transaction. He was well acquainted with general Picton. That appears from every line of the publication, which you may read if you think it necessary. And if your attention had been called to the whole book, you would have found, that it was in consequence of that knowledge,—that it was in consequence of his personal experience, and observation of the high character that belonged to general Picton, and (as he thought) of the unjust aspersions which had been cast on that character;—it was from that opinion, and not from wanton activity, that he has mixed himself with these transactions.

I am anxious you should be aware of that circumstance, because, if you were satisfied in your own minds that it was, what it has been described, the wanton act of a man unconnected with these parties, it would have given to that which he has committed a hue and shade of a very different description from that which belongs to it. Let me state, on the part of this gentleman—a gentleman and a soldier—that being convinced of the fact, he has interfered, from those honourable feelings which he possesses, and without which no man could exist in that situation of life. Suppose he has strong reason to believe, that his friend has been injured in his character and reputation, and comes to a conclusion too hastily; this is very natural in favour of those whom we love—I trust we all feel warmly interested on behalf of those who are our friends and whom we think injured—And if it be that warmth which has produced this offence, colonel Draper will be most ready to plead guilty to it. He does not affect that cold temper and indifference, which enables a man to sit quiet while his friends are loaded with accusations they do not deserve.

Gentlemen, it is also stated to you, that he had written the present publication, not believing, but pretending to believe, the contents of that letter and of that affidavit which have been read to you. That he not only did not

discredit it, but that he believed most fully, and most honestly, the contents of the letter, verified as they were by that affidavit, I presume you will not have the shadow of doubt. If that be so, without adverting farther to the observations that have been made in the opening, I think I shall have removed from your mind those unpleasant sensations, which must have been conveyed to them by the manner in which this publication had struck the advocates on the other side. "Unpleasant sensations" I call them, because most undoubtedly I may assume, that those who fill the situation to which you are now called, are infinitely more pleased—it is to them infinitely more agreeable,—to find the party not deserving the imputations which are cast on him, than to find them proved. Every man knows this, who has ever sat in an English court of justice. The inclination of juries (and they are desired by judges to indulge that inclination) is, to presume innocence, till the party has been found to be guilty.

I come now to state the facts which have given rise to the present publication.

General Picton, a gentleman of high respectability, whose honour and character have been (and I trust, hereafter will be still farther) vindicated had, several years antecedent to the time I am about to speak of, been left in the government of the island of Trinidad, by a name highly respected by us. This gentleman was, in consequence of his integrity and his abilities, called to that situation by general Abercrombie. And this appointment, so made by general Abercrombie, met with the fullest approbation of the government at home. And he who had been placed in that arduous situation (for arduous it was) from the opinion entertained of him by general Abercrombie, continued there for, I think, not less than six or seven years, bettering the situation of the island and of its inhabitants. It was thought, as it has been stated to you, that more persons should be associated with him in the government of the island, and about the period I have been speaking of—about the year 1801—a commission was issued, in consequence of which, three persons were appointed to the government of the island of Trinidad. The first in order of appointment was Mr. Fullarton, with him general Picton was continued, and a third, sir Samuel Hood, was added.

Gentlemen, it is material that though it was thought advisable, that more should be associated in the government of that island, that it should be governed afterwards by the united abilities of three, instead of one, yet still I may assume, that up to that period, the conduct of general Picton had met with the fullest approbation of the government at home. They (colonel Fullarton and sir Samuel Hood) went to Trinidad, to take on themselves the office, which they were to exercise jointly with general Picton. This joint appointment was

an ill-fated one unquestionably. Of that there can be no doubt; because, whoever might be right, or whoever might be wrong, the public has suffered by the want of union in the parties who were to conduct the government abroad. I mean to cast no reflections on any one of the three; I am only stating facts, and what was the result of their conduct. After colonel Fullarton reached Trinidad, differences, it seems, arose between them; and colonel Fullarton, who was called upon to assist governor Picton in the government of the island, did certainly think it necessary to investigate his antecedent conduct. And the result, without entering into a detail, was, as hinted by the attorney-general; governor Picton being dissatisfied (as I presume, most men would be, from the situation in which he had been placed) wished to resign, and to return to this country. He did so. What has been the result, and what facts have come to the knowledge of the public at large, since he returned here, I shall avoid as much as possible to introduce into this case. But it is necessary to advert to them, because if I did not, the purpose of the present publication could not appear before you.

Gentlemen, among other charges which in his wisdom colonel Fullarton thought fit to prefer against governor Picton, one was, an inquiry into his conduct respecting a woman of the name of Luisa Calderon—that she was not punished according to such law as governor Picton was bound to act by. Though the question has been decided in the place where I am now addressing you, yet that decision is not final: The business is not concluded: The decision that has been given elsewhere, has been alluded to by the attorney-general; and in the opinion of the privy council, who did examine into that case, general Picton stands perfectly acquitted of having misconducted himself on that occasion.

Gentlemen, it appears that there is connected with these transactions a person of the name of Lynch. The name you have heard. It has been stated that he had a conversation with Mr. Sullivan, one of the under-secretaries of state, on the subject of which it is that the present prosecution has arisen. Dr. Lynch, at that time, was about to leave this country, and to establish himself as a physician in the Island of Trinidad. Antecedently to his going there, he had occasion (no matter for what purpose) to call at the office of the secretary of state for the colonial department. And he has stated, that on that occasion, he had a conversation with Mr. Sullivan, the prosecutor of the present information. He was asked by Mr. Sullivan, whether he had any letters of recommendation to those who had the government of that Island, and he stated that he had only two letters to general Picton. On which he was informed by Mr. Sullivan, that it would be better if he could procure some, not to general Picton but to Mr. Fullarton, who

was to be the first-commissioner; and the reason that is given is, "Because," says Dr. Lynch, "I was told by Mr. Sullivan, that Mr. Fullarton would have it in his power to be of more service to me than governor Picton, as he, colonel Fullarton, had been instructed to investigate the antecedent conduct of general Picton, and that in all probability general Picton would be ordered to return to England before six months." *In point of fact, general Picton did not remain longer in that country, after colonel Fullarton got there, than five or six months. In point of fact, the conduct of general Picton was investigated. In point of fact, it did happen that investigation took place almost immediately on the arrival of colonel Fullarton in the Island.*

I mention these circumstances with a view to point your attention, and to show that the result happened agreeably to that statement. It has been alleged, that colonel Draper has been wantonly introducing this transaction, at a time when he did not credit, but discredited the fact that Mr. Sullivan did state to Dr. Lynch, that which the latter says he did, and which he has verified on oath. Because it does happen at last, that every thing conformable to such instructions undoubtedly did take place, is it to be inferred, that he, colonel Fullarton, went to that place without any such instructions? But whether he did or did not, it is not my present purpose or duty to investigate, and I mean to confine myself to my duty. But it is my purpose to show, that whatever might be the fact, these circumstances were strong to induce colonel Draper to believe, and to give credit to the statement which he undoubtedly received.

Gentlemen, Dr. Lynch made no secret of that. He says, that this having been so mentioned to him, a perfect stranger, and not in confidence, it occasioned his surprise that what had been communicated to him at that time, was not notorious at Trinidad. He expressed his surprise to Mr. Gloster, who appears to have filled the situation my learned friend fills in this country—the situation of his majesty's attorney-general in that island. It is not material, but it is said he is still in that situation.

It did not stop there, as you find by my learned friend the attorney general: for Dr. Lynch not only stated by letter the conversation he had with Mr. Sullivan, but Dr. Lynch has verified that letter by his affidavit, which has been read to you. Whether Dr. Lynch has truly stated the fact, it is not the purpose of the present inquiry to establish, nor am I interested in doing it. My client, colonel Draper, was certainly extremely desirous to be in a situation to avail himself of the testimony of Dr. Lynch:—not to swear that this was his affidavit, but that the facts, which are there stated, are truly stated. Gentlemen, colonel Draper has to thank the Court, and among them his lordship, for the

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indulgence he has received—for the postponement of this trial, in order that, by such postponement, he might have an opportunity of calling before you that Dr. Lynch whose name has been mentioned. And I will state that the Court itself felt the importance of that testimony, and it was that feeling which induced them to grant the indulgence which had been applied for. That every honourable exertion has been made by colonel Draper to procure his attendance is an unquestionable fact; but it is equally true, that as yet we have not been able to procure him to give his testimony before you. And I was instructed to make an application to his lordship to day for farther indulgence; but after I heard what had passed, I thought that application would have been preposterous, and therefore I did not trouble the Court with it. I was desired to ask farther time; but I was told we had been indulged so often in that way, that I did not think my application would have been complied with under the circumstances I should have been able to state.

Such is the situation of colonel Draper. He imagined that against his friend colonel Picton (who has been the subject of much investigation by the public, and who has always been an officer of high character) charges which colonel Draper felt to be unmerited had been brought. And if you could be called on to read all the parts of the publication now before you, I think not a man of you would doubt, that in point of fact the great object of this gentleman was, to defend the conduct of general Picton, and to show that general Picton would ultimately be found to be innocent of these charges that had been brought forward against him. Such was the situation in which colonel Draper saw him: general Picton was his friend and acquaintance: he had been acquainted with general Picton not only elsewhere, but on that island, where his government was carried on; and he felt (and felt warmly) an indignation, which I doubt not most of us in the same situation should have partook with him. He felt that indignation which arises from the supposition that the party was innocent. And if he so felt, could he do otherwise than consider it as a material circumstance, that Mr. Sullivan, or any other person, should have been directed to look into the conduct of this gentleman, even antecedent to the time when the new commissioners arrived at Trinidad? For you observe the communication of which Dr. Lynch speaks, is made in this country in the year 1802, previous to, or about the time of the sailing of those commissioners, who were to be joined with colonel Picton in the administration of the government of that island. He finds a gentleman of acknowledged character in the island, who had gone from this place, stating, it had been the intention of some person or other that the character of general Picton should be investigated. He finds an investigation takes place immediately on the

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arrival of colonel Fullarton. And it not appearing that there had been any instructions of government for that purpose, he could not but suppose it to be an improper idea. There were no instructions of government directing that. There was no such idea announced on the part of those who sent out the commissioners.

It was opened by the learned counsel, that he would endeavour to relieve colonel Draper from all the inconveniences to which he might be subjected in the course of the cause, and that he would not impose on colonel Draper the necessity of calling himself any of these witnesses holding the high situations you have heard of, and whose testimony has been laid before you: I could have wished either that that offer had not been made at all, or that not merely the letter but the spirit of it had been complied with. But if it be supposed that it is conferring a favour to submit to cross-examination those who are stated to be about to prove something against your client, it is a species of favour I will relieve my learned friend from presenting me with.

It has been also stated to you, that there has been an examination at the privy council. What passed has been stated here, and it is alleged that general Picton was himself perfectly satisfied with the explanation there given by Mr. Sullivan. But there is not a word of that in evidence before you, if evidence it would be. I had no desire to ask lord Buckinghamshire any question, which might be proved by any other person. You colonel Draper (say they) are placed in a situation of all others the most convenient: if you only chose to ask these gentlemen any thing you think fit, they will certainly prove our case against you, and therefore I present them to you for your cross-examination.

Gentlemen, it cannot be doubted for a moment, and you must take it for granted, that if my friends could have proved it, they would. I could have produced those who would have proved the contrary, and whom they have not ventured to call. The question is, whether that examination which was taken by his majesty's privy council could have been given in evidence. I conceive it could not, and therefore I think we may leave out of the case any impression that it might raise in your minds.

This is the way in which Mr. Attorney-general proposes to relieve colonel Draper from the difficulties in which he is placed in this case:

"Timeo Danaos, et dona ferentes,"

I again repeat that they have not given that in evidence, nor am I aware that it would be evidence at all, if it had been produced. But if (*which I do not understand to be the fact*) general Picton had been satisfied with the explanation that had been given, still, unless his being so satisfied had been communicated to colonel Draper, it is utterly impossible that colonel Draper can suffer on that account for what he has done. All this, it is said, will

be matter of advantage to colonel Draper: what I deprecate is, a colouring of this kind, all this appearance of candour and rectitude, and a disposition to show favour to the defendant, when no such thing is in fact meant. It never appears before you that on this subject any communication had been made to colonel Draper, that general Picton had been so satisfied. But I feel what would have been the effect of that fact. I feel it might have been said—if you, colonel Draper, are writing this pamphlet for the purpose of presenting it to the public, if an explanation had been made in his majesty's privy council, by Mr. Sullivan, upon oath, with which general Picton was perfectly satisfied, and he no longer felt that he had been an injured governor, why did you not insert that in your publication?

If that fact had been brought home to the knowledge of colonel Draper, you would have taken it into your consideration. And therefore, gentlemen; unless that had been traced (and it never can be traced) to col. Draper's knowledge (nor was there any satisfaction ever expressed, as I am instructed to state) could he suffer by it? This is material. You have no reason to suppose the publication had any reference directly, and in the first instance, to Mr. Sullivan. Because I will take the liberty to say, that if you look to Mr. Sullivan, you will find that he is merely introduced into the publication from the conversation that was stated to have taken place between him and Dr. Lynch. It was merely in consequence of Dr. Lynch's letter that Mr. Sullivan is mentioned at all. And the whole of the publication, from beginning to end, goes to establish the innocence of general Picton on that charge which has been the subject of investigation in this court, and in the course of the investigation that conversation or supposed conversation of Mr. Sullivan became important. It is not the primary object of colonel Draper to speak of what Mr. Sullivan is supposed to have said. His having said it is only introduced by being coupled with the facts that took place in Trinidad, and which made it appear, as if there had been an antecedent intention to make some investigation, and not as if it had arisen on the moment. And it was most important to colonel Draper to investigate it, because if it should appear that before these gentlemen went to Trinidad, there was an intention to find fault with the conduct of governor Picton, surely, surely, there is no great wonder that he should give credit to it; as I have already said, the primary object of the defendant was, to establish the good conduct of governor Picton, and that which is the subject of the present prosecution is only a secondary part; if that be so, does not it convince your minds, that there was no wanton introduction of Mr. Sullivan into this business, but, on the contrary in the pursuit of the subject in which he was employed he could not pass it over without observations,

and I may say important observations as to the facts I have now stated?

I have no objection to take the thing on the ground on which it has been put by the attorney general. You have the counsel on each side agreeing to it. What is the charge made on my client? Not merely the charge of having published the book; not merely the charge of publishing libellous matter, though each of these circumstances is for your consideration; but this is a charge, that he wantonly published this libel to the world, at the moment when he disbelieved the authority of that document, on the authority of which, he states himself to have acted. What evidence have you before you, gentlemen, that he did so disbelieve the document he has referred to? It has been given in evidence; and it is for you now to ask yourselves, whether you believe that any man could assert his belief of a document so circumstanced as this is:—but when I say that it is before you the jury, and that you are to ask whether any man would do it, I mean that you are to ask yourselves, not whether *any* man would do it, but a man who has, from his birth, supported the character of a gentleman, who has associated with that the character of a soldier (from which the character of a gentleman ought never to be separated), whether this gentleman, accustomed to honourable and manly pursuits, could usher into the world a publication founded on documents which he said he read, which he said he believed, but which at the moment that he so asserted, he never had given credence to.

Gentlemen, this is a strong accusation, a very strong accusation, to say, that colonel Draper published that, which he knew at the moment, which he believed at the moment to be untrue, but gave it to the world, not for them to judge whether it was true or not, but gave to the world a narrative which he himself disbelieved. In other words, that he has said the thing that is not. It is necessary to vindicate this gentleman's cause from that imputation. I am perfectly sure, from the instructions that I have received from colonel Draper, that it would be infinitely more painful to him than any thing I can relate, if the smallest doubt were to remain in your minds as to his belief of that document, to which I have so often referred. Let us see whether he so conducted himself, by the mode in which he did it: let us see whether he hastily leaped to this conclusion, or how far he came to any conclusion at all? Whether he asserted what is mainly untrue, or whether he paused and investigated, and took all that care that a man ought to take, before he made the publication in question?

Now observe, Dr. Lynch first states in common conversation, the facts of the communication that had taken place with Mr. Sullivan. He afterwards states that, in his letter to Mr. Gloster the attorney general of Trinidad. And then finding that there was

an insinuation expressed, that what he had said was not true, he gives it the sanction of his solemn oath, and makes an affidavit of the truth of the communication. All these facts were in the knowledge of colonel Draper before he published the book in question. He not only was acquainted with the conversation that took place between Dr. Lynch and Mr. Sullivan, but he knew of the letter and of the affidavit of the doctor; and not only that, but he did (and he has stated it to you) make a most minute examination into the character of the man, on whose veracity he was to act on the present occasion.

I shall read to you the words themselves. "This most extraordinary and important document, is an affidavit of Dr. Lynch, sworn before the hon. John Nihell, esq. chief judge of the island; the substance of which was first communicated by the doctor in a letter to Mr. Gloster, the attorney general of Trinidad a copy of which I also annex."

For this is not stated merely in the libel; but the documents follow—the letter and affidavit—and they are stated in the charge made against us. "A paper," he says, "involving a charge of such a nature as that which it proclaims, and against a person who ranks so high in the country, certainly requires that it should come with every proof and stamp of authenticity, both as to the high respectability of the author, and of the medium of its transmission."

Now, gentlemen, be good enough to observe whether the next sentence with which I shall trouble you bespeaks the understanding of a man who makes hasty leaps to a conclusion, or bespeaks a man contemplative and cautious in investigating, who distinguishes and examines the authorities of the statements, on which he was or was not to rely.

He says, "I, therefore, not having the honor of knowing the gentleman myself, considered it a sacred duty, as soon as I had formed the idea of communicating the affidavit to the public, to be scrupulous in my inquiries concerning him." That is to say, that he is a man of honour and veracity, and incapable of declaring any thing but the truth. "And I do now state from the most unquestionable authority, from those who have lived with him, that Dr. Lynch is a person of unimpeached integrity," &c.

There is much more to the same purpose and effect, but that is enough for the purpose for which I am using it; enough I think to show you, that, in truth, it is impossible you can doubt, colonel Draper did investigate, and most fully believed that statement which he has made. I assume, then, as I take it you must assume, that such was his opinion as to the fact of what has been laid before you, that he believed the truth of the document from the character of the author of it. In the publication before you, colonel Draper claims the right of animadverting on the conduct of a public man. Mr. Sullivan at that

time held an official situation; he filled the office of an under secretary of state. And as Mr. Sullivan, filling that public situation, chose to talk upon that which was the subject of that conversation between him and Dr. Lynch; being a public man and choosing publicly to talk of that which was afterwards done, namely, the investigation of governor Picton's conduct, colonel Draper animadverted on the conduct of this public man, so publicly by him stated. On that subject, I conceive, he trespasses on no law. That public men may have their public acts investigated, I believe there is no doubt. The manner in which you may investigate their conduct, depends on the nature of the subject, and on what they have said or done. It must depend on the thing itself, and on the public situation the person filled at the time. In this publication, colonel Draper discusses what he supposes Mr. Sullivan had said and done, in consequence of which he has been called before you. I conceive in that view of the case, he trespasses against no law; and as I said before, *I do not discuss it.*

I am ready and willing that you should take the point as it was stated by the attorney-general, whether he did this with a full confidence in the assertion of Dr. Lynch, or whether he wished to palm on the world as a conviction of his own, that which in fact did not exist in his mind? Gentlemen, in that view of the case, take this publication into your hands, and then say whether you believe that colonel Draper, with these motives that have been attributed to him by my learned friends on the other side, or with those motives I have attributed to him, issued the publication, which undoubtedly forms an ingredient in your judgment, because the whole question is, with what motives he published the book now before you? Do not imagine, for a moment, that I am contending that this is not a publication of colonel Draper. I should be wasting my lord's time and yours, and misconducting myself, if I were to call the fact of publication in question. But a word on that subject. I cannot say it strikes me, that the evidence goes to show, that after the Court had intimated its opinion of the publication, colonel Draper ever sanctioned the sale of one single copy. The testimony of the man who sold it necessarily comes under suspicious circumstances; I do not mean by that to reflect on him, but his testimony must be examined carefully; and if you look at his situation, you will see that he was the vender of that book, and that he was interested in all those copies which he says he sold, and was only excused from a prosecution himself by giving up the author. And therefore he comes before you, thinking he has done what he has done under the immediate directions of the author; but I think you will find that all his testimony amounts to this—that he had received originally instructions to vend the pamphlet. There can be no doubt of that;

and this is certain, that these instructions were continued down to a given period. That period was subsequent to the time when Mr. Frogatt had stated to him that Mr. Sullivan thought it was a libel. It appears that colonel Draper did not agree with Mr. Sullivan in his opinion of this publication; that Mr. Sullivan's opinion being communicated to Mr. Frogatt, did not convince colonel Draper that it was a libel, as he supposed it was. And therefore that communication did not stop the publication; and colonel Draper did not direct Mr. Budd to discontinue the sale; but as soon as he found that the court of King's-bench had intimated an opinion on the subject, he gave directions that no more should appear.

If that does not form any ingredient in this cause, as I am not aware it does, it was only to bring your minds and my lord's (if that fact had been made out) to give more credence to some other parts of the case; but that fact was not essential to the purpose of the present day, because this book was published by the directions of colonel Draper. Of that there is no doubt; the publication was capable of being made out without that fact, and that inquiry was gone into, not for the purposes of this day, but only to be employed on some other occasion; and therefore that you may be relieved from that, I will suppose for a moment that the book had actually been sent out into the world with an advertisement, signifying that it came from the author; I will suppose that no one of these books had ever proceeded from that author, as that advertisement purported; and if any such thing is supposed to have been done by colonel Draper, it would be fit it should be made the subject of investigation: I hope I am speaking to persons not aware of any such fact, and that no such fact has reached their knowledge, because such a fact as this is utterly and solemnly denied by the gentleman whose conduct I am defending, but however it does not appear to me to have been material to the present contest.

Gentlemen, the purpose of the present day is, that you should say, whether this publication is, as it has been insisted, a libel, and whether it has been ushered into the world with the motives ascribed to colonel Draper; and I beg you will not suppose the question to be, whether the book has been published by colonel Draper; I am ready to admit that fact; but I deny the motives which have been ascribed to colonel Draper on the part of the prosecution, in sending that publication into the world; and on that I trust I have not misconducted myself, in saying what I have said; and with this I beg you to take the case into your consideration.

Though colonel Draper does not call witnesses to the facts, it does appear necessary to call witnesses to show that he is not a man to be guilty of publishing to the world any thing which he did not believe at the time to be true. I shall

therefore call a number of most honourable and respectable gentlemen, and ask them what they think of the character of colonel Draper. They shall be asked whether or not he is a man who, from their long and intimate knowledge of him, in their judgment would be capable of ushering into the world a publication as true, which he at the moment believed to be untrue.

Gentlemen, with these observations and the examination of the witnesses I have adverted to, I shall leave the case for your investigation, only hoping that the defence of this gentleman (I trust I am not in the habit of alluding to such an inconsiderable individual as myself) may not have suffered by coming very lately into my hands in consequence of circumstances, but for the existence of which it would have been laid before you much more ably.

EVIDENCE FOR THE DEFENDANT.

Sir *Stephen Cottrell* sworn.—examined by Mr. *Marryat*.

I believe, sir Stephen, you have the honor to be clerk to the privy council?—I am one of them.

How long have you been acquainted with the defendant, colonel Draper?—From his infancy.

You were acquainted with his father, before you knew him?—I was in habits of much acquaintance with his father upwards of thirty years.

Have you had an opportunity of judging intimately of his feelings?—I think I have.

I would ask you, sir Stephen, whether you think him capable, or incapable of publishing any thing he believed to be untrue?—I should think perfectly incapable.

Of publishing any thing, of the truth of which he was not quite convinced?—I should think certainly not.

The Right Hon. *Robert Earl of Grosvenor* sworn.—Examined by Mr. *Dauncey*.

Mr. *Attorney General*.—My lord, this is evidence to character, and not to facts. I hope your lordship will think it a case in which I ought to reply?

Lord *Ellenborough*.—I shall not resist your claim to reply.

Mr. *Dauncey*.—I should have been very much obliged to the attorney-general, if he had had the goodness to inform me that he intended to make a reply before I called any witnesses.

Lord *Ellenborough*.—We shall consider it when the time comes for him to exercise it; perhaps it is now premature; at present you will go on.

Mr. *Dauncey*.—Pray, lord Grosvenor, how long have you been acquainted with colonel

Draper?—I think some years; six or seven years.

Does that acquaintance lead you to believe that colonel Draper is capable of publishing as true, a thing he knows not to be true?—I have always held colonel Draper to be a man of great rectitude, very eager, zealous, and extreme in his personal zeal on all occasions in the cause of his friends; and I am also very much convinced in this case, if he has shown any thing like an over-stepping, it must have proceeded from his honourable feelings, and his indignation at what he considered to be unmerited aspersions on the character of his friend, general Picton.

May I take the liberty of repeating the question—whether his character being such as you have described, you think he could send into the world, a publication, pretending to have credited it, and which at that moment he disbelieved?—No, sir.

The Right Honourable *John Christopher Lord Viscount Downe* sworn.—Examined by Mr. *Marryat*.

Your lordship, I believe, has been long acquainted with colonel Draper?—Yes, sir.

About what length of time?—Since the year 1795.

Has your lordship had an opportunity of judging of his principles and conduct?—Yes.

From the means you have had of judging of these, do you think him capable or incapable of publishing any statement of facts of the truth of which he was not fully convinced?—Perfectly incapable.

Lord *Ellenborough*.—You offer this, I take it for granted, in mitigation; because as to the nature of the crime—

Mr. *Attorney General*.—My lord, I did understand—

Lord *Ellenborough*.—I cannot suppose you to mean it for any other purpose than as going in mitigation of punishment. It cannot be considered as an answer to that which would be destructive of the fame of every person in society. It cannot be offered in the shape of a defence. Good God! because one man says a thing, and because I may believe what he says, am I at liberty to disseminate it all over the world? there is no colour for it. I receive this for the purpose of mitigation of punishment.

Mr. *Dauncey*.—Undoubtedly the way—

Lord *Ellenborough*.—If the fact of publication were doubtful, and if it were referred to a man who had such a character given to him, this would be evidence to go to the jury in answer to the charge, and in that way it would be most material. But here you do not dispute that fact.

Mr. *Dauncey*.—I admit the fact of publication, undoubtedly. I cannot but admit it.

Lord *Ellenborough*.—Admitting it to be

true that he believed it, does that repel the crime? But I will take it down, because, by having a minute of their evidence on my notes, it will prevent the necessity of making affidavits. But I must take care in what way it is understood, for it would be shaking the foundation of the criminal law, if I were to receive it in any other way than in mitigation of punishment.

Mr. *Dauncey*.—Your lordship will take it in any view in which you think it material. On the subject of the libellous matter I will not add a word. I have only directed my observations to what were the supposed motives, which I conceive to be inseparably connected with the charge made against colonel Draper; and it is to the motives in this case that I call the witnesses.

Lord *Ellenborough*.—The last witness said, I have been acquainted with him since 1795, and from the means I have had of judging of his principles and conduct, I think him perfectly incapable of publishing any thing which he did not believe to be true.

General *Knollys* [claiming to be Earl of Banbury*], sworn. — Examined by Mr. *Marryat*.

Lord Banbury, I believe you are in the same regiment of guards with colonel Draper? —Yes.

How long have you been acquainted with him?—Most intimately, from his coming into the guards.

How many years is that ago?—It is about sixteen or seventeen years ago, or perhaps more.

Have you had an opportunity, during that time, of forming an opinion of his conduct and principles?—A most thorough opportunity.

Mr. *Attorney General*.—My lord, I really think I ought not to suffer questions to be put as to the feelings and principles of a man.

Lord *Ellenborough*.—I cannot receive it as having any operation with reference to the verdict, but I can receive it in mitigation of punishment. Though I am to perform my function here, namely, to explain to the jury the sum and substance of the evidence, and to give them my opinion of the libel, yet that on which the Court properly gives judgment, comprehends matter that may be introduced by affidavit; which in this case will be unnecessary, because it is now sworn, and will be applicable only in mitigation of punishment. It is in that view only that I receive it; if I were to receive it in any other view, I should be guilty of a breach of my duty.

Mr. *Dauncey*.—My lord, as I wish to be understood in this case—

Lord *Ellenborough*.—If this evidence were offered as applicable to the issue, it would be proper to resist it. Because, it has over and over been solemnly decided by the Court that no such matter as that the defendant heard the slander from another person and believed it to be true, is a defence. And I am very much afraid that my anxiety not to exclude colonel Draper from the means of proving that which may be felt by him to be material to a certain extent, may counteract the discharge of an important duty. I shall endeavour to prevent that effect, but I do not recollect this having been done before.

Mr. *Dauncey*.—I only offer it, as I said before, to the motives of the party.

Lord *Ellenborough*.—The Cobbler of Messina thought he had good motives, and that he had a good conscience, when he went out and shot every man whose principles he thought were inimical to the government, yet he was held to be a murderer.

Mr. *Attorney General*.—On the ground on which they support this evidence, I object to it.

Lord *Ellenborough*.—I am not authorized to publish to the world a libel of the grossest nature, because somebody may have told it me, and I believed it. According to the state of a man's credulity, he may or may not believe a report. Many men believe what others do not; but it can be no justification that another man was the original author of it, and that the republisher believed it to be true.

Mr. *Dauncey*.—Your lordship has decided what shall become of this evidence, and they have objected that it is not to be received in that view.

Lord *Ellenborough*.—I receive it for one purpose, to save the expense and trouble of making affidavits in mitigation of punishment.

Mr. *Garrow*.—I should not have attempted to offer a word, but for the sake of the precedent.

Lord *Ellenborough*.—The jury are not to attend to it.

Mr. *Garrow*.—I object to its being received at all in this stage of the proceedings.

Lord *Ellenborough*.—The gentlemen may go on, and offer this evidence on the ground I have stated, i. e. to supply the place of affidavits hereafter.

Mr. *Garrow*.—It is perfectly new, my lord: the difficulty that presents itself is this: the Court may receive this evidence in mitigation of punishment, but the jury have nothing to do with it. The jury ought not to have heard it; for let them take all the pains they can not to attend to it, yet it is impossible to say that it may not have some influence upon their minds in the discharge of their duty;

* The House of Lords, March 9th 1813, resolved, that the petitioner had not made good his claim to the earldom of Banbury.

but suppose this to be admissible in mitigation of punishment, the Court cannot now receive it, because what Mr. Dauncey states is most distinct; it is not whether he is to be taken to be a man of character and veracity on the testimony of officers of the highest rank and character; he does not content himself with that; but his object is, to draw from these noble and respectable witnesses their sentiments as to the *feelings* and *principles* of this gentleman—Whether they believe him capable or incapable of publishing that which he does not believe to be true. My lord, I apprehend that must affect the verdict; you cannot receive it, because it goes to the verdict.

Lord *Ellenborough*.—It does not go to the verdict, but in mitigation of punishment. Do not let it be understood that it is in contravention of the facts that this evidence is received. It is only to character, and not in contravention of the facts.

Mr. *Dauncey*.—In giving evidence to the character of a man, may it not be asked, whether in the judgment of the witness he is capable or incapable of the acts imputed to him?

Mr. *Garrow*.—Evidence to general character would be receivable, and his lordship would receive it.

Mr. *Dauncey*.—I do not mean to set my experience against Mr. Garrow's, but I think you very frequently hear questions of that sort asked of witnesses to character.

Mr. *Marryat* [to the Witness].—My lord, is colonel Draper a man capable or incapable of publishing that which he does not believe to be true?—I should not suppose so from the knowledge I have of him as a friend. I respect him as an officer and a gentleman. In a more remote connection, it is impossible for me to think he would deviate from the truth in the smallest degree under any pretence whatever.

[Sir George Ludlow was called, but did not attend.

Major-general sir John Stewart was next called, but did not attend.]

Sir *Samuel Hood*, K. B. sworn.—Examined by Mr. *Dauncey*.

Sir Samuel Hood, how long have you known colonel Draper?—I have known colonel Draper since the year 1802.

Did you know him when you yourself were commander at Trinidad?—I did.

From the knowledge you have of him, is he a person who would give to the world any thing as a fact which he believed, when in truth he did not?—No; I do not think he would.

General *Manners* sworn.—Examined by Mr. *Marryat*.

I believe, general Manners, you are in the Guards?—Yes.

How long have you known colonel Draper?—From the time he was page to his majesty, and afterwards when he came into the Guards I became more intimate with him.

How long have you known him?—I do not exactly know. We have been very intimate since he came into the Guards.

Is he capable or incapable of publishing that as true, which he does not believe himself?—Perfectly incapable.

James *Dawkins*, esq. sworn.—Examined by Mr. *Marryat*.

Mr. Dawkins, how long have you known colonel Draper?—Twelve years.

From the knowledge you have had of him, sir, during that time, would he, in your judgment, give to the world a publication, the truth of which he did not believe?—I conceive not. He is a man of strict honour and a very gentleman-like man.

General *Burton* sworn.—Examined by Mr. *Marryat*.

You are in the Guards?—Yes.

How long have you been acquainted with colonel Draper?—Seventeen or eighteen years.

Have you been intimately acquainted with him during that time?—Particularly so. I have been myself upwards of thirty years in the third regiment of Guards.

In your judgment of him, is he capable or incapable of giving to the world a publication the truth of which he himself disbelieved?—No: perfectly incapable.

General *Leigh* sworn.—Examined by Mr. *Dauncey*.

General Leigh, how long have you known colonel Draper?—From a boy.

From your knowledge of him, do you believe him capable of giving to the world a publication, the truth of which he himself disbelieves?—I believe him perfectly incapable of that.

Mr. *Dauncey*.—I have done.

Lord *Ellenborough*.—Having been asked, I thing the attorney-general has a right to reply, if he chooses to exercise his privilege.

REPLY.

Mr. *Attorney General*.—Gentlemen of the Jury; I rise under singular circumstances. If my learned friend had called witnesses to the character of colonel Draper in the way in which such witnesses can only be called with any effect at a trial at Nisi Prius:—if he had asked the witnesses whether they thought colonel Draper was likely to publish a libel, I should not have risen. That would have

been legal evidence, because, when the fact that the libel had been published by the defendant is controvertible, the probability, from the previous character of the defendant, that he must or must not have published it, ought to be taken into consideration, the fact being itself in doubt; but here the fact of publication is admitted, and the evidence of the witnesses whom my friend has called, if we had failed to substantiate the fact, goes completely to cure such defect in our case.

At the time they tell you colonel Draper is not likely to publish that which he does not believe to be true, I think lord Grosvenor says that colonel Draper is a very eager, zealous man, and likely to over-step the line of moderation——

Lord *Ellenborough*.—A very eager man.

Mr. *Dauncey*.—And if he had overstepped—

Mr. *Attorney General*.—And that if he had overstepped in the present instance the line of moderation, it must have proceeded from honourable feelings, &c. The probability arises from that evidence. Does not that show that he was likely to do the thing? which thing whether he did it or not, is not in controversy; for it is admitted that he has done it.

Now, my reason for exercising my right is, because I have heard doctrines propagated by my friend that were never before ventured upon by any man, as far as I know, and I call on his lordship to say whether these doctrines are or are not to be uttered, and to use the language of the defendant in the libel, whether they ought not to be nipped in the bud.

My friend attempted to argue as if I had rested my case on the question, whether colonel Draper believed the fact that he imputed to Mr. Sullivan; and he was ready to join issue with me on that point, on which he would have you believe I had put the case.

Lord *Ellenborough*.—I am surprised to hear that stated, because the contrary is the fact.

Mr. *Dauncey*.—I never stated that which is now imputed to me by the attorney-general.

Mr. *Attorney General*.—I know not so artful an advocate. He argued as if I had put the case on that ground, for he assumed it, and told me he was ready to meet me on that ground, and argued to you as if it had been by me put on that ground. Gentlemen, a more dangerous doctrine was never uttered in a court of justice, by any advocate at the bar, in defence of such a publication. That the author of a libel, however false, however malicious, however monstrous, however degrading to the character of the man upon whom it is written, is to go free because forsooth he believed it to be true! What! is a credulous man, displaying a character like that which lord Grosvenor has given of colonel Draper, a

man over-zealous for his friends, a man, who wishes to deliver his friends from accusations that are brought against them, because he chooses to think that any person is an accuser, therefore to publish to the world a gross libel on that accuser? Is this to be tolerated, even if he were an accuser of general Picton? But why do I say accuser? I would not degrade him to that situation because Mr. Sullivan never has been general Picton's accuser. He has never uttered a word against general Picton; he has never set on foot any inquiry against general Picton. But because colonel Draper took offence that accusations were brought against general Picton by others, and because his fancy and warm imagination led him to suppose a fact that never existed, namely, that Mr. Sullivan had delivered or had sent out private instructions to colonel Fullarton; it is therefore contended that colonel Draper is justifiable in publishing this libel, and in saying of Mr. Sullivan, "In what language shall I address so black and cowardly a tyrant?"

For what reason? Because the credulous zeal of colonel Draper for his friend, general Picton, for he can find no other excuse, led him to suppose what he has now published, that when the commissioners were sent out, Mr. Sullivan sent out private instructions with Mr. Fullarton, for the purpose of undermining general Picton's character, and bringing on him those accusations that afterwards followed; and this is the defence offered to be made in a court of justice by colonel Draper. Because he believed this to be true, therefore he is justified in publishing it to the world.

Having a strict right to reply, I would not suffer such doctrines to be stated in a court of justice, without the strongest reprobation. Suppose, gentlemen, some infamous man in your neighbourhood chose to say to another that any third person had committed a robbery, would that justify the person to whom that communication was made, in publishing it to the world? If this doctrine could be supposed to prevail, we should have swarms of libellers. The world would be filled with them.

I shall not, however, abuse the right of reply, but content myself with these few observations, and shall submit entirely to his lordship what effect this evidence of character which has been given, ought to have in a court of justice.

SUMMING UP.

Lord *Ellenborough*.—Gentlemen of the Jury;—This is an information against lieutenant colonel Draper for a libel on the character of Mr. John Sullivan, who was lately an under secretary of state. Mr. Sullivan in his evidence stated that he was under secretary of state at the time to which this publication, which is charged to be libellous refers; and this supports that averment in the information.

It is my duty to state (what in my opinion no man can doubt) that this publication is not only a libel, but a libel of a very gross description. The fact of publication is admitted. Indeed there was no necessity for the admission, and it does not favour in any manner the case of the defendant, because the fact was completely proved by Budd the publisher.

Budd was the person employed to publish an edition, consisting of five hundred copies at least, and by the sale of which he derived considerable profits. After it had been published, an intimation was given by Mr. Frogatt that it was a libel on Mr. Sullivan, he (Mr. Frogatt) applied to Budd to stop the publication, and Budd communicated that intimation to the present defendant, colonel Draper. Now, as to the expressions which he has used in this book, of which there are so many of an irritable nature;—If there had been one or two ardent expressions, which the author had used, in the absence of that prudence which ought to have governed his pen, when speaking of the conduct and motives of others, one would have thought that the intimation, that this was considered by Mr. Sullivan as a libel, would rather have tended to bring him back to reflection—that he would have attended to the suggestions of the publisher, and stopped the publication; but instead of that, when colonel Draper understood that the wound was felt by Mr. Sullivan, he orders that the publication should continue, and for one week afterwards it was continued. Now, I ask if colonel Draper is capable of comprehending the meaning of his own words, was not that order to continue the publication *malicious*, in the ordinary sense of that word? Can any man who applies his reason to the subject, say, when a person has published that which is grievously injurious to the character of another, and the author receives notice that it will be made the subject of prosecution, that to order the publisher to go on selling it, was not malicious? And however high a character this gentleman may have received to-day, I venerate the character of a man, who yields obedience to the law of the land and respects the feelings of his fellow subjects, more than that of a man who goes on to repeat the injuries he has committed. It continued to be published to a period about which there is some little doubt; whether it stopped at the time of the application being made to this court or not, seems to be somewhat doubtful; the witness wavered on that subject. Taking it in the most favourable light, we may assume that he continued the publication as long as he thought it prudent to do so; but gentlemen, up to that period of time considerable industry seems to have been exerted (though we do not see how often it was advertised, there were some directions given about advertising) in order to increase the circulation of the book so published.

The question is, whether this attack upon
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Mr. Sullivan for his conduct as under secretary of state be a libel—whether it be of a calumnious nature? It is an allegation in the information that he filled the office of under secretary (lord Buckinghamshire being principal secretary) of state for the colonial department at that particular period. And I think that in this case a degree of fairness and liberality has been shown on the part of the prosecution, which seldom occurs, I allude to the presentation of the prosecutor for cross-examination. I think that the bringing forward Mr. Sullivan shows a great degree of confidence on the part of the prosecution. This (or indeed any other) question might have been addressed to that gentleman: Did such a conversation pass between Dr. Lynch and you as he has sworn to in his affidavit? The conduct of the prosecutor has thus given the defendant an opportunity of extracting the truth, if he had been disposed to avail himself of it. I forget for how many months this trial has been put off, for the purpose of affording an opportunity to Dr. Lynch to come over to this country, who, when he had come, as it appears to me, would have been able to say nothing applicable to the issue of guilty or not, but only whether, in point of fact, a conversation of the sort stated had passed between Mr. Sullivan and him. But is it to be endured, that if A says to B any thing calumnious of C, B's mouth is immediately to be opened, and he is to publish it all over the world, merely because he has heard it from another person? A man may be thus accused of the most abominable crimes, whose situation is such that the publication of the accusation might ruin him, he would be disgraced in a moment by the publication to the world of a report which might be perfectly unfounded. But it is said, the man who circulated the report believed it to be true. That is in point of law no excuse whatever, and it is still worse, if the party, as in this case, has put the calumny into writing, of which, although somebody had told it to him, he is the author of *quoad hoc*, being the person who gave it to the world.

You know that in a civil action for libel, if the defendant proves the truth of the facts alleged in the publication, that is an answer to the action. But on an information or indictment if the defendant could prove the facts to be true, it is no defence. And if colonel Draper had offered evidence of the truth of that upon which the information is founded, it would not have served him as a defence; because the law says that the feelings of mankind are not to be distressed, the world is not to be agitated by the publication of matters of a defamatory and irritating nature, which rouse the spirits of men, and lead them to acts of violence against each other. Even if it were true,—and there is not the least colour for believing it,—it would be no warrant for publishing it. It is no apology that this gentleman took it from another. But even suppos-

ing the basis to be true, colonel Draper has greatly deviated from propriety in his comments. It would have been highly blameable in any person to have made such observations. And because a person named in the commission was led to investigate the conduct of general Picton, is colonel Draper, or any man warranted in publishing such unworthy insinuations as this book contains?

Mr. Sullivan, as far as it appears before us, is a man who has done no one thing to call down any of these stinging observations, which must be doubly stinging to the feelings of a gentleman and a man of honour, whose character without protection would be exposed to an high degree of ignominy and disgrace, and his feelings to misery and distress.

I shall now state to you the nature of this libel.

The first part of it contains the letter of Dr. Lynch to Mr. Gloster, and then the doctor's affidavit, narrating the supposed conversation between him and Mr. Sullivan. "I do therefore again call upon you," he says to Mr. Sullivan, founding himself upon that letter and affidavit, "to come forward and to answer my question. In the name of the British empire, in the name of the army that supports, serves, and sheds its blood for that empire, in the name of every thing honourable, just, and fair, do I call upon you, John Sullivan, esq. to avow the author of those *secret* instructions. You *must*, sir, *now* come forward; this business shall be no longer overlooked or forgotten: while I live, and have a pen or a tongue, you shall not escape investigation or notice." Because he chooses to credit what Dr. Lynch is supposed to have said, he treats Dr. Lynch as a man of the highest character and respectability.

"I will take you from your hiding-place, or your protection, be it where or who it may, and summon you as an officer and a gentleman to avow your author for those private instructions. The task I know is Herculean, but I will endeavour to drag the Cacus from his den. It is in vain, Mr. Sullivan, to sophisticate about the business: a disavowal on your side is totally and utterly impossible, entirely incredible. You, sir, I am satisfied will never think of it."

Whether Mr. Sullivan would or would not, he had an opportunity of asking, when that gentleman presented himself on the floor for cross-examination. Mr. Sullivan might have been asked whether such a conversation had ever passed.

"Dr. Lynch, I state, is anxious and ardent to re-assert and corroborate his affidavit at the bar of a British court of justice."

This is matter of mere assertion. "I blame and accuse you in the face of your country, and before that body of men, the root and source of whose honour and reputation you have attempted to undermine and destroy for ever." So that he takes on himself

affirmatively to pronounce that Mr. Sullivan had attempted to undermine and destroy the reputation of that body of men, "by secretly, insidiously, and without any just cause, presuming to circulate a report, for which you had no right or legitimate authority, no honest or honourable pretext for circulating or insinuating."

Colonel Draper had no other authority for this than the mere statement of Dr. Lynch.

"This, Mr. Sullivan, is my charge against you, and you will now clear yourself before God and your country, as well as you can."

Is it to be endured that because a man may have a regard for his friend, and may have seen this letter and affidavit, he may call any of us a culprit, imputing to us the most abominable crimes in every sentence?

"That you have *acted* upon this declaration, it is almost impossible for me even to know; I do not say you have, because I cannot prove it; but if you have *really acted* upon it, surely I am well entitled to say—" "In what language shall I address so black and cowardly a tyrant?"

Gentlemen, is it to be endured that the defendant, or any other person should harrow up every feeling of mankind, on the mere hypothesis of the assertion by another; and then present a man as a criminal at the bar of the public, assuming him to be guilty of this or of that offence.

"I am well entitled to say, and I do say to you Mr. Sullivan, that if you have *acted* upon your declaration to Dr. Lynch, you are not only one of the most dangerous men in the kingdom, but that you add one to the list of the most disgraceful and atrocious qualities in the long and black catalogue of human vices—I mean, a dark and cowardly malignity." Over and over repeating the imputation which a man of honour and feeling is least capable of bearing—that of cowardice.

He now supposes that Mr. Sullivan had not acted upon it—"Even then, Mr. Sullivan, see the sum of your merits: you sought to ruin a man"—he assumes this on the mere ground of this conversation, which he supposes to have passed between Mr. Sullivan and Dr. Lynch—"whom I believe you never saw, and who, I am sure, never offered you a slight or an injury, in thought, word, or deed. Now, sir, make up your account, and address yourself, not to your fellow man, but to the just, merciful, and beneficent Being, who sees, and through his omniscience permits, these wickednesses; ask pardon of that throne of justice, for an attempt which, if not nipped in its bud, will canker the life root, and eat away the cable that moors the vessel of confidence to the pier of the state."

Now, observe these words, gentlemen: "You, Mr. Sullivan, have sown the seed of discord, you have shot the sharp and barbed arrow of doubt and distrust, you have un-

"cloaked the stiletto, and endeavoured to plunge it to the heart of one of our bravest and most meritorious officers."

All this is levelled against a person, who, as far as it appears to us, has had no connexion whatever with general Picton, nor has done any act that is injurious, directly or indirectly to that officer: and yet he is reviled by col. Draper as an assassin. Language more insulting and atrocious cannot be used, it can only apply to those who have been guilty of the greatest crimes, and consequently it must be most offensive to a man of virtue and honour.

"Under a scorching sun, and in the most malignant climate, while every honest energy was awaked, and called forth to uphold the interest, and maintain the honour of the nation, you came behind an officer's back and you smote him."

Gentlemen, I shall not detail to you the remainder. What I have stated is fully sufficient to enable me to perform the duty which the law has imposed on me, namely, to state to the jury my opinion of this publication: I conceive that it is a gross libel. I wish to make every allowance for the conduct of this gentleman (who was described by a noble lord to be a man very zealous in the cause of his friends) that is consistent with the due administration of justice. It is for you to say, whether the publication of this book is or is not a crime. Because he thought general Picton an injured and calumniated man, he was not therefore to injure and calumniate another, on the loose assurances of a person from whom he never had an opportunity of investigating the truth. No credit could be attached to the affidavit, from the very anomalous way in which it made its appearance; and a sense of the duty which we owe to our fellow creatures, and to society at large, ought to have restrained colonel Draper from this publication, in which Mr. Sullivan has been grossly traduced and calumniated. If you cannot see any reason to view it in a different light from that in which it has been stated by me, it will be your duty to pronounce a verdict of guilty; and in that event the evidence which has been given to-day of the character of colonel Draper, will come under the consideration of the Court. I have no doubt, after you discharge your duty, that the Court will pay proper attention to it, at the same time shewing a due tenderness for the value of reputation and the security of character.

The Jury found a verdict of GUILTY.

COURT OF KING'S-BENCH,

November 10th, 1807.

Mr. Dauncey.—My lords;—In this case, which was tried before your lordship at the last sittings in this place—

Lord *Ellenborough*.—What is the name of the case?

Mr. *Dauncey*.—The King on the prosecution of the Right Honourable John Sullivan, against colonel Draper. It is unnecessary to go at large into the circumstances that attended the trial. The ground of my application to the Court for a new trial is very short: it is my duty to submit it to the Court; but what may be the decision of the Court upon it, it is not for me to say. This was a libel on Mr. Sullivan. There is no doubt that the publication was a libel, nor was it ever alleged by me for the defendant, that it was not. But the Court may recollect—

Lord *Ellenborough*.—Is the defendant present?

Mr. *Dauncey*.—Yes, he is, my lord. I mentioned to the attorney-general that I was going to make this motion, and Mr. Garrow is with him. The Court will recollect that they had postponed the trial to give the defendant an opportunity of producing a person of the name of Lynch, who had made an affidavit in Trinidad, as to a conversation that had taken place between him and Mr. Sullivan; and which was, in fact, the groundwork of the publication. The Court had postponed the trial of this cause to enable colonel Draper to produce Dr. Lynch; but on the day of the trial he had not arrived. The Court refused to put off the trial any longer, and some little doubts were hinted on the other side, whether he ever would arrive.

The ground of my application for a new trial is, that Dr. Lynch has arrived, and is now in this country; and he states upon affidavit, the circumstances under which he was called upon to attend here, that he had received intimation in time for his being here, and would have attended, but it was supposed that a process would issue from this country to take his examination there, as in other cases; it was thought that course would be adopted; and it was not till the 18th day of June, that he received a letter from Mr. Gloster, the attorney-general for the island of Trinidad, stating, that his personal attendance would be necessary.

Lord *Ellenborough*.—There is no occasion, is there, to refer to my report?

Mr. *Dauncey*.—I believe not, my lord. On the 23rd of July he went on board, and arrived in this country in the month of September.

Now, supposing the Court to be disposed to consent that Dr. Lynch should be examined, what he would have to state, must be the truth of that communication, to the truth of which he had deposed in the affidavit on which the libel was founded. I do not mean to state, that if it were proved that t e

whole was correctly true, that would be a justification for the publication of a libel. I cannot say so. But yet though the evidence of Dr. Lynch would not go to the verdict, as the trial had once been postponed by the permission of the Court, in order that Dr. Lynch might have an opportunity of being examined, I do not think those who instructed me misconducted themselves, and I hope I do not misconduct myself in stating this fact, leaving it to your lordships to dispose of it as you please. Most unquestionably, this evidence would not go to the verdict. But if the Court should think—

Lord *Ellenborough*.—Since the fact cannot alter the verdict, there can be no reason for granting a new trial; but when colonel Draper may be called upon to receive judgment, you will have the benefit of this gentleman's deposition, stating such circumstances in mitigation, as he shall be able to allege for the benefit of the defendant.

Mr. *Dauncey*.—I hope I did not act amiss in stating this to the Court, as the Court had once postponed the trial of the cause, for the purpose of obtaining the evidence of this gentleman.

Lord *Ellenborough*.—Very well. As to colonel Draper's coming up, at present we make no order.

The KING v. Colonel DRAPER.

SIR;—The Court of King's-bench will be moved on Wednesday next, the 18th instant, at the sitting of the Court, for judgment on the defendant. We are, sir, your very humble servants,

FROGATT, LIGHTFOOT, and ROBSON,
Attorneys for the prosecution.

Castle-street, Nov. 13, 1807.

Mr. MILLER, defendant's attorney.

COURT OF KING'S-BENCH.

Nov. 18th. 48 Geo. III. A. D. 1807.

The following affidavits were filed on behalf of the defendant and read.

His royal highness *Frederick duke of York and Albany* field marshal and commander in chief of his majesty's forces, maketh oath and saith, that he is personally acquainted with the above named defendant, Edward Alured Draper, and hath been so for several years last past. And this deponent further saith, that the said defendant hath served in the third regiment of foot guards, upwards of thirteen years, and in the course of service he has been employed in several campaigns in Flanders, Holland, Gibraltar, the Windward and Leeward Islands, in Egypt, in Hanover, and also in various important and confidential

situations in the British army, in all which he has uniformly acquitted himself to the entire satisfaction of the general officers under whose immediate command he was placed, and also in a manner fully to merit his, this deponent's, most perfect approbation. And this deponent further saith, that he verily believes, that the above-named defendant is a man of real honor, and would not, on any consideration whatever, even utter that which he did not in his conscience believe to be true.

The honourable sir *George Ludlow*, of Bulstrode-street, Cavendish-square, in the county of Middlesex, at present residing at Canterbury, in the county of Kent, a lieutenant-general in his majesty's service, maketh oath and saith, that he has personally known the above-named defendant for several years last past, and the above-named defendant served under him, this deponent, in Egypt, in a manner highly to his credit and reputation as a gentleman and a soldier. And this deponent saith, that he hath had numerous opportunities of forming, as he verily believes, a proper estimate of the mind and manners, and character of the said defendant. And this deponent further saith, that the said defendant is, to this deponent's knowledge, a man of honourable feelings, of a peaceable disposition, not at all disposed to give or cause offence, and is highly esteemed by all his brother officers. And this deponent further saith, that from a long and tried acquaintance with the said defendant, he, this deponent, without any solicitation whatever, appointed him, the said defendant, his, this deponent's, assistant adjutant-general, while serving in Hanover, and during that service admitted and received him as one of his, this deponent's, private family. And this deponent lastly saith, that he is firmly persuaded that the said defendant would not write or publish any account whatsoever, unless he believed that what he was publishing was really and *bonâ fide* true.

Thomas Grosvenor, of Grosvenor square, in the parish of St. George, Hanover-square, and county of Middlesex, at present at Charbro Park, near Blandford, in the county of Dorset, esq. major-general in his majesty's army, maketh oath and saith, that he, this deponent, hath been well and intimately acquainted with the above-named defendant from his infancy, and has served with the said defendant in the third regiment of foot guards, in Flanders, in Holland, in the Mediterranean, and in Ireland. And this deponent further saith, that the said

defendant is a man of strict honour and integrity, mild in disposition, and perfectly incapable, as he, this deponent, verily believes, of doing any malicious or unworthy action, as well as of either writing or declaring what he does not in his conscience believe to be true. And this deponent further saith, that he is most thoroughly satisfied that the above-named defendant would not have published the letter and affidavit stated in the pleadings of this cause, had he not believed the facts to be as stated and sworn to, by Dr. Lynch, therein named.

Frederick Thaddeus Lynch, now residing at No. 4, Cecil-street, near the Strand, the city of Westminster, and county of Middlesex, doctor of physic, maketh oath and saith, that in and previous to the year 1802, this deponent carried on his profession of a physician, at Galway, in Ireland, of which part of the United Kingdom he is a native. And this deponent further saith, that his wife's brother, Nicholas Lynch, who was a resident in the Island of Trinidad, having come to Ireland, in 1801, on a visit to his relations there, and having represented to this deponent, the great benefit which might probably attend this deponent, if he would quit Galway, and practise as a physician at Trinidad, this deponent, in consequence of such representations, as well as of the statements which almost daily appeared in the different newspapers, of the advantages that would be likely to accrue to early settlers there, resolved on going out to Trinidad, and accordingly left Galway for that purpose, and in his way thither, came to London, where he procured, through general Craig, and a mercantile House in London, two letters of recommendation to colonel Picton, the then governor of the said island, and was promised another to colonel Rutherford, the surveyor-general there, which however this deponent sailed without receiving. And this deponent further saith, that whilst in London, he read several accounts in the newspapers, purporting that government would give large tracts of land to such white persons as should be desirous of settling in Trinidad, in order to benefit the colony. And this deponent, in consequence thereof, in or about the month of November, 1802, called at the secretary of state's office, in order to have an interview thereon with lord Hobart, then upper secretary of state, or his under secretary, Mr. Sullivan. And this deponent further saith, that it was about noon when he first so called, and that on being informed by a gentleman in waiting, that neither of them were then at the office, this deponent was thereupon shown into

the room then appropriated for persons waiting to see those gentlemen, and after waiting a very considerable time in such room, the same gentleman, addressing himself to this deponent, observed, that as it was then two o'clock, in all probability neither lord Hobart or Mr. Sullivan would be at the office that day, and that if his, this deponent's, business, was not of a private nature, he would deliver any communication this deponent would intrust him with, and procure him an interview on the following morning. And this deponent further saith, that he thereupon acquainted the said gentleman, that he was desirous of knowing what inducement government held out to persons going out to settle at Trinidad, and that a written memorandum was thereupon made of the purpose for which this deponent had called, and the said gentleman directed this deponent to call on the following day: and this deponent says, that on the following day, he again went to the secretary of state's office, and after waiting a few minutes was desired by the same gentleman to walk up stairs, where he was introduced to the said John Sullivan, who then held in his hand the paper so written on the preceding day. And this deponent, after stating to the said John Sullivan that this deponent was a physician on his way from Galway to Trinidad, where (in consequence of therepresentations of a friend of his who was settled there) he intended to establish himself in that character, asked the said John Sullivan what was the inducement held out by government to settlers going to that island? to which question the said John Sullivan answered, that the said encouragement from government was not intended for such persons as this deponent, and could be of no consequence to him (or would not suit him), as the government intended to allow merely ten acres of waste land to each white person, with a few necessary tools for the cultivation thereof: whereupon this deponent finding the boon so very inconsiderable, lightly replied, "that the quantity 'this deponent would be entitled to, 'might enable him to make a botanical 'garden.'" And this deponent further saith, that when he was about taking his leave, the said John Sullivan asked this deponent whether he had any letters of introduction to his majesty's commissioners at Trinidad, and on this deponent's answering that he had only two to governor Picton, the said John Sullivan recommended it to this deponent to procure some, if possible, for the first commissioner, colonel Fullarton, and gave as a reason for such recommendation, that colonel Fullarton would have it in his power to be of more service to this de-

ponent, as in all probability colonel Picton would be ordered to return to England before the expiration of six months, as colonel Fullarton was instructed to investigate the said colonel Picton's past conduct in Trinidad. And this deponent further saith, that he sailed from this country early in the month of February following, and arrived at Trinidad in or about the month of March, 1803, and that as well before he sailed, as during the voyage, and after his arrival at Trinidad, he frequently mentioned the said conversation which so took place, as aforesaid, between the said John Sullivan and this deponent, this deponent being at that time unacquainted with colonel Fullarton, colonel Picton, or sir Samuel Hood, or their respective connections. And this deponent further saith, that, in point of fact, the past conduct of colonel Picton at Trinidad, was investigated by the said colonel Fullarton, as this deponent has been informed, and believes within six weeks after his, the said colonel Fullarton's, arrival at Trinidad aforesaid. And this deponent further saith, that in the month of February, 1805, he, at the instance of the hon. Archibald Gloster, his majesty's attorney-general at Trinidad, addressed the said Archibald Gloster, the letter stated in the information filed herein, and that he also, on or about the 15th day of July following, made and deposed to the affidavit also set forth in such information, the latter of which this deponent addressed and sent to the president of the privy council. And this deponent further saith, that in or about the month of August, 1806, this deponent was informed by William Holmes, esq. John Black, esq. and George Knox, esq. that the said John Sullivan had prosecuted the above-named defendant for publishing the before-mentioned letter and affidavit of this deponent, and that it was material to the said defendant's justification that this deponent should establish the truth thereof before a court of justice in Great Britain, and this deponent was then asked if he would undertake a voyage for that purpose, on receiving a handsome sum of money for his expenses and loss of time during his absence from the colony, and this deponent at length consented to come to England. But this deponent, on further reflection, as well considering that a large expense might be saved, if this deponent was examined in the colony, under process from this country, as from other reasons, called on the said John Black and George Knox, and after some conversation, this deponent understood and believed, that the propriety of this deponent's plan was admitted, and that letters would accordingly be written over

to this country. And this deponent further saith, that he resided about eleven miles from the town of Port of Spain, and scarcely went to that town more than two or three times in a year. And this deponent further saith, that on or about the 18th day of June last, this deponent received from the said Archibald Gloster, a letter, of which the following is a copy:

"Dear Sir;

"My friends in London are most solicitous for your arrival in the business of Mr. Sullivan's action against colonel Draper; by their letters, I am authorized to give a bill of 200*l.* sterling upon your embarking in the convoy, to pay your expenses—indeed your own character, permit me to say, is in a great measure concerned, as Mr. Sullivan has sworn in positive contradiction to the fact which you in your deposition set forth.

"On your arrival, you will see colonel Draper, and I have authority to say, that a handsome provision will be made for your return in December, as you will only be wanted in November term. Let me hear from you with your early determination upon this subject, and believe me, with best compliments to Mrs. Lynch, yours, very truly. A. GLOSTER."

And this deponent further saith, that in consequence thereof, on the 23rd day of July last, he embarked on board the *Fortitude*, bound from this country, and arrived in London on or about the 29th day of September following.

Mr. *Attorney General* then addressed the court in behalf of the prosecution, and requested that judgment might not be pronounced, until he had time to answer the affidavit of Dr. Lynch, which he considered as mainly increasing the guilt of the defendant; and the contents of which he would show, by the affidavit of lord Buckinghamshire, could not possibly be true.

The Court ordered the case to stand over accordingly.

COURT OF KING'S-BENCH.

November 23, 48 Geo. III. A. D. 1807.

Mr. *Attorney General*.—In the case of the king *v.* colonel Draper, I move your lordships for the judgment of the Court.

The following affidavits for the prosecution were put into court and read—

The right honourable Robert earl of *Buckinghamshire*, of Roehampton, in the county of Surrey, maketh oath and saith, that from the month of May, 1802, to the month of May, 1804, he, this deponent, was his majesty's principal se-

cretary of state for the colonial department, and the right honourable John Sullivan was, during that time, the under secretary to this deponent. And this deponent further saith, that some time in or about June, 1801, Thomas Picton, esq. was by commission under the great seal, appointed governor and commander in chief in and over the island of Trinidad, and that in the month of October, 1802, William Fullarton, esq. and Captain, now sir Samuel Hood, were appointed by his majesty's commission under the great seal, joint commissioners with the said Thomas Picton. And this deponent saith, that he never did, directly or indirectly give any instructions to colonel Fullarton, to investigate the past conduct of colonel Picton at Trinidad, nor was any intention of ordering such an investigation ever entertained by this deponent, nor did he ever give any instruction to that effect, to colonel Fullarton, privately or officially, nor desire the said John Sullivan so to do, nor did the said John Sullivan, to the knowledge or belief of this deponent, ever give any such instruction, nor was any thing, to the knowledge or belief of this deponent, said or done, to induce the said colonel Fullarton to make such investigation. And this deponent further saith, that the said John Sullivan and this deponent were in such habits of mutual confidence and unreserved communication upon all subjects relating to the business of the office of secretary of state, that he, this deponent, is perfectly convinced if the said John Sullivan had entertained any opinion of the necessity or expediency of an inquiry into the past conduct of colonel Picton at Trinidad, either by the commissioners, or by the said colonel Fullarton, he, the said John Sullivan, would have communicated that opinion to this deponent, but that no suggestion upon the subject of such an inquiry was ever made to this deponent, by the said John Sullivan. And this deponent is fully satisfied, from the whole of the conduct of the said John Sullivan concerning the business of the Trinidad commission, that the said John Sullivan was most anxious and desirous of promoting harmony and conciliation amongst the said commissioners, and he, this deponent, verily believes the said John Sullivan to have been utterly incapable of availing himself of his official situation, to advise, recommend, or sanction such investigation, as aforesaid, without the knowledge or approbation of this deponent.

BUCKINGHAMSHIRE.

Sworn in Court, this
20th of November, 1807.

By the Court.

The right honourable *John Sullivan*, one of his majesty's most honorable privy council, and late his majesty's under secretary of state for the colonial department, now residing at Richings lodge, in the parish of Iwer, in the county of Bucks, maketh oath and saith, that he this deponent did, upon the application for the information in this cause, file an affidavit, stating therein, among other things, that previous to the month of December 1802, he, this deponent, had no knowledge, or any reason to believe that it was probable that general Picton would be ordered to return to England: nor did this deponent then or at any time since know, nor had he any reason to suspect or believe that colonel Fullarton had any instructions whatever, either of a public or private nature, to investigate the conduct of general Picton in Trinidad, or to procure his removal from the government of that island, or his being ordered to return to England: nor, until April 1803, had this deponent any reason to know or to suspect that any circumstance had occurred which had occasioned any difference of opinion between the said general Picton and colonel Fullarton, but that, on the contrary, this deponent expected and believed that the said colonel Fullarton and general Picton would co-operate in the most cordial and friendly manner in carrying into execution the powers given to them in and by their commission. And that this deponent expressed himself on all occasions to that effect to the said colonel Fullarton previous to his departure. And in all his correspondence with the said colonel Fullarton, and particularly in the last letter written by this deponent to the said colonel Fullarton before his departure from England, this deponent expressed himself as follows: "From the manly character of general Picton I am led to hope that you will quickly fall into habits of free communication; and I know from my own experience how much reason he will have to be satisfied with your mode of proceeding." And that this deponent's said hopes and expectations of cordial co-operation of the commissioners, was strengthened by the first letter from the said colonel Fullarton after his arrival in Trinidad, dated twelfth January, 1803, which, amongst other things, contains the following passage: "I was received by general Picton with great politeness, and with all the attention which lord Hobart had been pleased to direct." And the letter afterwards adds, "general Picton and I have carefully read lord Hobart's instructions to the Commissioners, and we shall not lose a mo-

"ment in preparing to carry his lordship's intentions into effect." And that this deponent never did upon any occasion take any step, or recommend any measure, either of a public or a private nature, with a view, or that had, or could be construed to have, a tendency, in any manner whatever, to prejudice or injure the said general Picton as governor or commissioner at Trinidad or otherwise. And this deponent now positively and solemnly upon his oath declares, that he never did, either directly or indirectly, inform Dr. Lynch or any other person, either in conversation or otherwise, before the month of December 1802, or at any other time, that in all probability general Picton would be ordered to return to England in six months, as colonel Fullarton was instructed to investigate the past conduct of general Picton at Trinidad, nor use any words to that or the like effect; nor had this deponent, previous to the month of December 1802, any knowledge or any reason to believe it was probable that general Picton would be ordered to return to England. Nor did this deponent then, or at any time since know nor had he, nor has he now, any reason to suspect or believe, that the said colonel Fullarton had any instructions whatever, either of a public or a private nature, or any hint, recommendation, or advice, to investigate the conduct of the said general Picton in Trinidad, or to procure his removal from the government of that island, or his being ordered to return to England; but, on the contrary, this deponent entertained the strongest hopes and expectations that the said colonel Fullarton and general Picton would cordially co-operate in carrying into execution the powers given to them in the said commission; nor until April 1803 had this deponent any reason to know or suspect that any circumstance had occurred which had occasioned any difference of opinion between the said general Picton and colonel Fullarton. And this deponent further saith, that he never did, upon any occasion, take any step either of a public or a private nature, with a view, or that had, or could be construed to have, a tendency, in any way whatever, to prejudice or injure the said general Picton as governor or commander at Trinidad or otherwise.

JOHN SULLIVAN.

Sworn in Court,
20th Nov. 1807.

By the Court.

William Fullarton, of Worton House, in the county of Middlesex, esquire, a colonel in his majesty's service in India, maketh oath and saith, that in the

month of October, 1802, this deponent and captain, now sir Samuel Hood, were appointed by his majesty's commission, under the great seal, joint commissioners with Thomas Picton, esquire, then governor and commander in chief in and over the island of Trinidad. And this deponent saith, that neither previous to, nor at the time, nor at any time after this deponent was so appointed, did he receive, directly or indirectly, from the earl of Buckinghamshire, then secretary of state, nor from the right honourable John Sullivan, his under secretary, nor from any person whomsoever, any instructions, intimation, or suggestion, to investigate the past conduct of the said Thomas Picton at Trinidad, or to take any other measures, with a view to procure, or bring about the recall or removal of the said Thomas Picton, or which could have a tendency to produce such an event. And this deponent would have considered and treated any proposition to such effect from any person, as a gross indignity. And this deponent saith, the said John Sullivan, upon all occasions, as well in conversation, as in writing, expressed his hope and expectation that this deponent and the said other commissioners, would conduct the important matters entrusted to them, with the most friendly co-operation.

W. FULLARTON.

Sworn in Court,
November 21st, 1807.

By the Court.

Mr. Dauncey.—I appear before your lordships on behalf of colonel Draper, who is present to receive judgment of the Court, for the offence of which he has been found guilty; and, my lords, it certainly forms no part of the instructions which I have received, to justify the publication, but if any observations occur to me, by which colonel Draper may be relieved from any further imputation, I am quite sure the Court will not be unwilling to hear them. From the report your lordship has read of what passed at the trial, I feel that I am entitled to dismiss any supposition that colonel Draper meant in any part of his conduct, to oppose his judgment to that of this court. Your lordship will recollect the examination of the bookseller; a great deal of time was spent in endeavouring to ascertain whether or not colonel Draper had continued his instructions to the bookseller to sell, after the Court of King's-bench had intimated its opinion. I believe I take your lordship's report correctly, when I say that the result was, that after he had retired from the court, when your lordships' opinion had been intimated, he gave immediate directions for suppressing that publication. I state this, that it may not be

supposed that colonel Draper had, after he knew what was the opinion of this Court, directed that the publication should go on, though he might have done so after having heard what was the opinion of Mr. Frogatt.

After the affidavits on the part of colonel Draper have been heard, I trust I may venture to assume, that the court will not suppose that he was capable of uttering to the world a publication, which he, whether mistakenly or not, did not believe to be true. Colonel Draper is, unquestionably, anxious upon that subject; your lordships will, I think, forgive that anxiety, and I trust in that I am not mistaken, when I say that I think colonel Draper did not hastily give credit to the affidavit of Dr. Lynch. That such letter existed, and that such affidavit had been made, there is now certainly no question; it is an undoubted fact. Your lordships, I am sure, will think that the letter, corroborated as it was by the affidavit, was calculated to make that impression which, in fact, it did make, upon the mind of colonel Draper:—but I will refer your lordships to the manner in which this is stated by colonel Draper himself; I would rather read it from the book itself, than trust to my own recollection. What I shall read will show that colonel Draper [was not hasty in his belief. It is a part of that book for the publication of which colonel Draper is now before the Court. After having referred to this letter and affidavit, he says—“A paper involving a charge of such a nature as that which it proclaims, and against a person who ranks so high in the country, certainly requires that it should come with every proof and stamp of authenticity, both as to the high respectability of the author, and of the medium of its transmission. I therefore not having the honour of knowing the gentleman myself, considered it a sacred duty, as soon as I had formed the idea of communicating the affidavit to the public, to be scrupulous in my inquiries concerning him; and I do now state, from the most unquestionable authority, from those who have known and who have lived with him, that Dr. Lynch is a person of unimpeached integrity; he is a regular graduated doctor, a learned and scientific man:” he then states the circumstances under which Dr. Lynch went out to the island of Trinidad. Now, upon that subject I have only to submit to the Court that colonel Draper having made these inquiries, did not hastily credit the statement of Dr. Lynch.

My lords, I conceive, we are not at this moment discussing whether, in point of fact, any instructions had been given, or whether any such communication had taken place, as that which is the subject of Dr. Lynch's affidavit. I conceive I am not on the one side, nor my friends on the other, called upon at this moment to discuss whether that communication which Dr. Lynch has represented, did pass, as his affidavit states, or whether it did

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not pass as Mr. Sullivan's affidavit states, and as is inferred from the affidavits of lord Buckinghamshire and Mr. Fullarton. The only point about which I am at present anxious on that subject, is, that it should appear to the Court that at the time he made the publication, there was sufficient reason for colonel Draper to think that the fact was so; and if it should turn out, or your lordships should conceive, that the fact was not so, still that does not touch the point on which my anxiety hinges, namely, that he did so believe at the time, and on what I hope your lordships will think did not appear slight grounds.

Supposing, however, that colonel Draper had not been satisfied, even by the inquiry that he made relative to the character of Dr. Lynch, and the fact of the affidavit that is mentioned, I hope I may add, that the circumstances which occurred, had a tendency at least to induce him to believe that such instructions had been given; for it turns out now, that in truth, the conduct of governor Picton was very shortly after investigated, and he was recalled, colonel Draper having left the island previous to this time. All I wish to impress upon the court, is, that he believed what he has stated. If it be not the business of this day, to discuss whether the fact be so, or whether colonel Draper was satisfied as to the fact by any investigation in the privy council, still I trust I have removed from him every other imputation than that which belongs to the publication itself, and upon this part of the subject I shall not add a word more. But it is equally a part of my instructions from colonel Draper, and I am bound in his name to declare, upon the honor of a gentleman, which he permits me upon this occasion to do for him, that he did undoubtedly at that time, believe the affidavit Dr. Lynch had made, and did also believe that general Picton was not satisfied (by any proceedings which had taken place in the privy council) that such instructions had not been given. This is the subject of his greatest anxiety—that he should not for a moment be supposed to have published that which he did not believe to be true.

I am perfectly aware that if I have succeeded (as I hope I have) in inducing the Court to believe, that colonel Draper gave credit to the affidavit, after his inquiry into the character of Dr. Lynch; and that he was also of opinion that general Picton was not satisfied with any inquiry that had taken place,—which representation of the motives of colonel Draper receives confirmation from the high character he bore, and the high opinion formed of him by those whose evidence your lordship has stated,—I am aware, I say, that all these circumstances form no answer to this charge, nor do I offer them as such: but at the same time I know perfectly well, that when this Court administers justice, they look at the feelings which men experience, and under which they act; and I trust that in

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this case they will make some little allowance for those of a soldier and a gentleman, who conceived he saw sufficient evidence of what he thought an injury to the honour and character of a gentleman who had been his commander and who still remained his friend. I will not trouble your lordships with further observations, entertaining no doubt that the Court, in exercising its discretion, will take these circumstances into consideration.

Mr. Marryat.—On the part of colonel Draper I will take the liberty of adding an observation or two. He is brought before your lordships for publishing a libel upon Mr. Sullivan, Mr. Sullivan swearing in his affidavit that the facts stated are not true. I will not now enter into the question whether the subject matter of it be true or not. I do not complain of Mr. Sullivan resorting to that course which he has taken, nor am I interested in any way to re-assert that which the public only can decide, upon the conflicting affidavits of these parties.

It was at the trial imputed to colonel Draper, that he published this with a knowledge that it had been investigated before the privy council, and that governor Picton was himself satisfied upon the subject; but no evidence was laid before his lordship at the trial, nor is any affidavit now laid before the Court to prove that any investigation took place before the privy council upon this subject at any time after Dr. Lynch's affidavit had arrived, still less that the result was communicated to colonel Draper. Whether there was or not any inquiry in consequence of Dr. Lynch's letter, I do not presume to state, but I am sure that nobody stated, that after the arrival of Dr. Lynch's affidavit any inquiry took place before the privy council, or that if there did, any human being had revealed one syllable of what had taken place.

My lords, it was stated as a reason why the trial should not be postponed any longer,—it having been postponed from November to June,—it was surmised as a reason why the trial should not be further postponed, that the notion of Dr. Lynch's coming to give evidence was improbable and illusory, and that there was no idea that he would come. Colonel Draper was desirous that the Court should be satisfied, that he had not urged this as a reason for postponing the trial without having taken measures to procure his attendance; and the result of those measures has been, that at the very time those suggestions were made, Dr. Lynch was upon the eve of embarkation, for on some day in the month of June, Dr. Lynch actually embarked and came to England. His doing so has been a considerable fine and punishment to colonel Draper. He could not come here without putting colonel Draper to a considerable expense, and it appears upon the affidavits that a considerable advance was made by colonel Draper, previous to his quitting the island of Trinidad.

The affidavit of lord Buckinghamshire, which has just been read, states, that there was no intention on the part of his lordship, that there should be any particular investigation into general Picton's conduct, and colonel Fullarton states that he received no instructions to that effect; but the libel did not impute to Mr. Sullivan, that there were any existing instructions for such investigation: all that was imputed to Mr. Sullivan in substance was, that he had said this to Dr. Lynch, *without any legitimate authority and honourable pretence for so saying*. These two affidavits therefore are consistent with what Dr. Lynch has said, and do not go the length of impeaching that which has been written by colonel Draper.

With regard to Mr. Sullivan's affidavit, I would make only one short observation—he denies *in part* that which Dr. Lynch asserts. Dr. Lynch states in his affidavit, that at the time of waiting upon Mr. Sullivan at the secretary of state's office, Mr. Sullivan recommended him to procure letters of introduction to the other commissioners, in addition to those which he had to general Picton, and that Mr. Sullivan gave as a reason for that, that probably those persons might have more opportunity of serving him, as general Picton was likely to be recalled, the commissioners having received an instruction to investigate his past conduct. That conversation with Dr. Lynch is denied in Mr. Sullivan's affidavit, but the denial extends merely to the fact of instructions to investigate general Picton's past conduct, and the probability of his arriving here in a few months. *Mr. Sullivan does not deny that he advised Dr. Lynch to procure letters to other commissioners, as they might be of more service to him than general Picton—that forms no part of Mr. Sullivan's affidavit, nor is it in any respect denied*. Why they would be of more service, I will not presume to say; it is enough for me to state, that both these affidavits may be true. It is not necessary for colonel Draper to throw any imputation upon Mr. Sullivan; all that he is anxious about, is, that the Court should be of opinion that he had a rational ground for believing this to be true at the time he published it, and that he has not published it since any affidavit which Mr. Sullivan has exhibited to the contrary, was known to himself.

It appears that when this information was moved for, the rule was obtained upon the Wednesday, to show cause upon the Saturday following. It appears that upon the Sunday evening, for the first time in all probability, on taking some legal advice upon this subject, colonel Draper was informed that it would be proper to stop the publication; and when he moved to enlarge the rule, which was finally disposed of on the Monday morning, he did proceed to stop the publication; so that from the Wednesday to the Monday, the publication continued, and upon the Monday following the rule to show cause, the sale was

suppressed. Till he obtained an office copy of Mr. Sullivan's affidavit, he had no means of knowing whether he admitted or denied it, but as soon as he found that Mr. Sullivan had denied it, he withdrew the publication, which had indeed continued only for a few days. It appeared upon the trial, that the sale was to no great numerical extent, as it appeared upon the evidence about one hundred and sixty. This is the extent of colonel Draper's delinquency: he has published that which the law deems a libel upon Mr. Sullivan, he has published it under a full conviction of its truth, and thinking it his duty as a good subject to let the public be informed of what he supposed to be true.

Mr. Gurney.—My lords, I also am of counsel for colonel Draper. I will state only one circumstance, in addition to those which my friends have submitted to your lordships, which goes to prove, decisively, that colonel Draper must have believed that which Dr. Lynch had stated. If he had not, he certainly would not have incurred the expense which he has incurred, for the purpose of inducing Dr. Lynch to come to England, in order either to prove that to be true which he had stated, or to give Mr. Sullivan an opportunity of vindicating his character, and of relieving himself from the charge which Dr. Lynch had made. I do not in the least mean to say, that what Dr. Lynch has stated is true, but I conceive the fact of his being brought to this country for examination, must afford conviction of the sincerity of colonel Draper. I do not think it necessary to take up more of your lordships' time, but I trust that, under these circumstances, your lordships will think colonel Draper is entitled to a lenient consideration.

Mr. Attorney General.—My lords colonel Draper is certainly much indebted to my learned friend, Mr. Dauncey, for that consideration which he has desired the Court to have of the defendant's feelings. No man seems to be more alive to any insinuation against his own character than colonel Draper. No man is more impatient or restless under the charge that it should ever have occurred to his honourable mind to publish of Mr. Sullivan, not what was not true, but what he, colonel Draper, did not believe to be true. He feels that the finest feelings of a soldier, a man of honour, and a gentleman, are outraged. He feels that life is not worth supporting, whilst such an imputation remains upon him. I wish, my lords, that he had had the same consideration for Mr. Sullivan which he desires your lordships to have for himself. I wish that notwithstanding the care which my friend gives him the credit of having taken that nothing should be published lightly against Mr. Sullivan, he had had a little of that care. I wish that he had proceeded somewhat less hastily. I wish that possessing, as he states to your lordships, these fine feelings himself, he had supposed it possible, that there might be other men of honour, other men of feeling, other men who

would feel that their lives were rendered miserable by being told, that they were dark and cowardly assassins; by being told, that they had uncloaked the stiletto, and plunged it into the breast of an officer—by being told, that they had come behind the back of an officer, and in that cowardly situation smote him.—I wish that colonel Draper, feeling so acutely the slightest imputation upon his own character,—feeling that he ought never to be removed from that pinnacle on which he has placed himself,—had considered how deeply a man must suffer under the grievous imputation which he by this libel has cast upon Mr. Sullivan.

I am justified by his lordship's observations at the trial, in saying, that if the gentleman, who now stands for your lordships' judgment, had ransacked the English language for the purpose of selecting from it the most insulting, the most degrading, the most rancorous, the most malevolent epithets, he could not have found more insulting, more degrading, more rancorous, more malevolent terms, than those which he has used against the prosecutor Mr. Sullivan.—It is impossible for your lordships, who have heard the libel read, to need any observations upon the atrocity of the terms that are used. I do not express myself too strongly, when I say, that no diligence, no imagination even, could have furnished stronger imputations than those which the defendant has cast upon Mr. Sullivan.

But it is said by my learned friend, Mr. Dauncey, that he did not engage in this business lightly; and by my learned friend behind me (Mr. Marryat) that colonel Draper published it from a firm conviction, that it was his duty, as a good subject, to make this known to the public. Now first, with respect to his not having published this libel lightly; upon what grounds does this assertion rest? Another part of the libel not given in evidence in the cause, is read: in which colonel Draper states that this gentleman, from whom this information is received, appeared to him, upon inquiry, to be himself a man of high character. I shall not go out of my way to cast reflections upon any one. What does appear of this gentleman upon the affidavit, is merely that he was settled in Ireland, that he thought he should obtain a more beneficial situation by going out to practice at Trinidad—that he called upon Mr. Sullivan to know what encouragement was given to persons going to settle there—that he was extremely piqued at being kept two hours waiting—that inquiring into the nature of the encouragement given, he found it was only ten acres of land, and that at last he went out to Trinidad. That is all we know of Dr. Lynch; though I admit that, in the pamphlet, colonel Draper speaks very highly of him. But if it is to be said, that colonel Draper did not publish this libel of Mr. Sullivan lightly, I would ask, if colonel Draper really meant to inform himself of the truth of this charge, was it his duty

only to inquire into what sort of a man Dr. Lynch was? Would not common sense have led him to make some inquiry concerning Mr. Sullivan? Was not Mr. Sullivan's character a consideration that would have entered into the mind of a candid man, as having some bearing upon the question? and if colonel Draper had taken the trouble to make inquiry into the character of Mr. Sullivan, I undertake to say, that with the utmost diligence he could have used, he never could have learnt from any quarter, that the breath of slander had ever tainted his character. Instead, however, of making this inquiry—instead of inquiring into the probability of the fact itself, that Mr. Sullivan could have said that which he imputes to him—he contents himself, not with swearing in his affidavit but with stating in another part of this libel, that he had made those inquiries concerning Dr. Lynch.

Now my lords, let us see what it is that he charges upon Mr. Sullivan. I say, *charges*; because it is impossible to conceal, that at the time he published this libel—at the time he was prosecuted—at the time he put off the trial—at the time he was brought up for judgment, and at the time that he now stands for judgment before your lordship, he still does continue to repeat the same charge against Mr. Sullivan.

Now let us see what that charge is which he has (as he states to your lordships) not lightly brought forward. It is, that Mr. Sullivan being the under secretary of state to lord Buckinghamshire, when a commission issued to general Picton, colonel Fullarton, and sir Samuel Hood, to take upon themselves the government of the colony of Trinidad, gave private directions to colonel Fullarton to investigate the character of general Picton, who had before held the government of that colony, and stated, that from the effect of those private instructions, it would follow, that general Picton would in a short time be recalled from the island.

My lords, if colonel Draper had been in an indifferent state of mind upon the subject—if his object had been only to investigate the truth, one should think, that he would have examined the probability of such a conversation. That Mr. Sullivan, the under secretary of state,—who probably prepared this commission, but who was certainly cognizant of it,—who was in the constant habit of communicating with those who ordered that commission to be prepared,—who was the channel through which all communications passed,—should have dared to give private directions to colonel Fullarton to act contrary to, or at least inconsistent with, the instructions communicated to him by his commission; this is a charge of so deep a dye, a charge so improbable, that I really think your lordships would suppose it almost impossible to find a man sufficiently credulous to believe it.

But, my lords, improbable as it is that Mr.

Sullivan should have done such a thing, the manner in which the communication is made adds tenfold to the improbability. For how is this communicated? It is pretended, that after Mr. Sullivan had conducted himself in such a way as to be guilty of one of the highest misdemeanors a man in his situation could commit,—namely, the having sent out private instructions to one of the commissioners to act inconsistently with the general instructions contained in his commission,—when Dr. Lynch, a man whom he never had seen or heard of in his life, called upon him to inquire what encouragement would be given to the settlers at Trinidad, he asked him whether he had any letters of introduction, and being told he had some only to general Picton, he communicated to this *unknown adventurer*, that he, Mr. Sullivan, had sent out instructions to colonel Fullarton to inquire into the conduct of general Picton, who probably would be soon sent back from Trinidad.

My lords, can it be said that colonel Draper has not published this slander lightly? that he has not published it, until he had well considered the probability of its truth? that he has not published it, until he was himself convinced that it was true?—convinced without making any inquiry from Mr. Sullivan himself, without making any inquiry of what had passed at the office—convinced upon this blind statement, that Mr. Sullivan had sent out private instructions to a commissioner to countervail the official instructions which he received; and that having done this, he had voluntarily, wildly, foolishly, madly communicated it to a man who held himself out only as an adventurer going to Trinidad, and who had never been seen, known, or heard of by Mr. Sullivan before. Could any man, except colonel Draper, swallow such an improbability?

Then how is he defended upon his trial? Witnesses are called to prove that they believe that colonel Draper would not publish any thing that he did not believe to be true. It was at the time admitted by my learned friend, that that did not furnish him any justification. It was not pretended that it bore upon the point then at issue, but it was urged as an extenuation of this offence, that he did not publish it without believing it to be true; and I recollect a noble person, who sat by his lordship during the trial, and who was called to give this evidence of character for colonel Draper, stated, that from what he knew of colonel Draper, he could not but believe that he had acted from an *over zeal*. I catch at that as the best excuse that colonel Draper can make to your lordships: I say, *as the best* of two very bad, perhaps unpleasant ones: but colonel Draper will not complain of me, when I say, that I believe it would be more to his advantage before your lordships if it appeared that his conduct proceeded to a certain degree (for so I suppose

he must put it himself), from an infirmity of understanding: for how is this case presented to your lordships? The defence is, that colonel Draper would not publish what he did not believe to be true. What has he believed to be true? He has ventured to publish against a man, whose character was irreproachable, upon the credit of one whom he never had seen or heard of before, that that person, whom he libelled, had sent out to Trinidad, contrary to the directions which he had given to the commissioners by the commission under which they acted, private instructions to take part against general Picton, and to procure his recall; and that having done so, he communicated this gross misdemeanor which he had committed, to a perfect stranger, a Dr. Lynch, who came to him to ask what encouragement would be given to him if he went out as a settler to Trinidad.

My lords, if colonel Draper really did publish this, believing it to be true, he is the most credulous of human beings. He has yielded to evidence which no man possessing the common reasoning faculties of man, ever did believe. He certainly has sought to defend his heart at the expense of his head. But let me suppose him to have set up this defence effectually before your lordships. Let me suppose him to have prevailed upon your lordships to think that, under circumstances in which no man of common reason would have believed the imputation against Mr. Sullivan, he did believe it. Let me suppose him to be as credulous as any ignorant child ever was of any legend of witchcraft that was read to or by him. Will your lordships receive this as an excuse for the publication of this libel? Will your lordships say, that a man, who has this infirmity of head, may with impunity commit these offences, which, if he be permitted to commit them with impunity, will be a sanction for those who have not that excuse to indulge the depravity of their hearts? Will your lordships say, that because from the character given of colonel Draper, you may suppose that he believed what he published, that therefore he is justified in publishing it, or that his guilt is in any degree extenuated by it? I am sure that your lordships will not say so.

Only see, my lords, with what diligence and industry this publication has been circulated and continued. If your lordships look into the evidence, you will find, not as my learned friend stated, I think, that as soon as this was intimated to colonel Draper he desisted from the publication—that which your lordship observed at the trial is a much more correct statement of the case, namely, that when he found that the wound rankled, when he found that the blow was felt, when he found that Mr. Sullivan was smarting under it, when he found that Mr. Sullivan possessed those feelings, which the defendant

has by his learned counsel just desired your lordship to believe that he now possesses, then it was that he redoubled the stroke—then it was, after a message by Mr. Frogatt that this was received by Mr. Sullivan as a gross attack upon himself—then it was that he directed Mr. Budd to continue the publication, and had no regard whatever for those feelings of Mr. Sullivan so expressed to him, which he now desires your lordships will give him credit for possessing himself. So much for the conduct of colonel Draper in the publication, and at the trial.

I wish that the case ended here. I wish I had to join with colonel Draper in so much of his defence as could permit me to believe, that however he might formerly have been misled in this publication, however he might have been misled in persevering in that publication, after he knew how it was felt by Mr. Sullivan, still there was a period at which he had endeavoured at last to place himself in a more favourable situation with respect to Mr. Sullivan, and with respect to your lordships—that he had not always persevered in this slander—that he had not continued even after this trial to cast and to fix upon Mr. Sullivan, the same imputation. But I have not been able to collect from a single word that has passed, either from my learned friend who led this case before your lordship, or from my friend behind, or from Mr. Gurney, or from himself—I have not heard a single expression from which I could collect that colonel Draper does not now persist in repeating the same charge against Mr. Sullivan, which is contained in this libel. I have heard nothing from which your lordships can collect that that is not now the state of mind, in which he stands before the Court.

I do collect from what has been stated by my learned friend behind me, that it is not for us to-day to be discussing whether the charge be true or not, but that it is for the public, upon the conflicting affidavits which have been produced in this court, to determine, whether what colonel Draper has chosen to publish of Mr. Sullivan be or be not founded in fact, and to which of these conflicting affidavits credit is to be given. Conflicting affidavits, my lord! Is then colonel Draper so infirm of mind as to think, that upon looking into these affidavits, a man of common reason, taking into consideration the probability on the one side, and the improbability on the other, of this story, can doubt for one moment? I want to know what man, under any circumstances, can possibly free himself from any charge, which the malignity of another chooses to bring against him, if upon the state of these affidavits Mr. Sullivan is not clearly acquitted. The improbability of the charge itself was too gross to suffer it to be believed by any but a willing mind. None but a man who wished to believe it could imagine that the thing was possible. Who swore to this? no one but Dr. Lynch;

a man unknown to Mr. Sullivan, swearing to a fact, which I should need much confirmation of concomitant circumstances to believe to be possible, though it were not contradicted.

What is the fact that Mr. Sullivan is stated to have communicated to Dr. Lynch? that private instructions were sent out to colonel Fullarton to inquire into the conduct of general Picton, and procure his recall. Now is that the fact? Could those instructions have been sent out without something passing in any office? Without something in the correspondence that would lead to a suspicion of it? Your lordships have Mr. Sullivan's positive and absolute denial of this. You have his affidavit stating in the most direct terms, not only that he never received from lord Buckinghamshire, or from any other person, any directions to send out such instructions to colonel Fullarton, but that he never did send any such, either before, at, or after the time, when colonel Fullarton left this kingdom. But, my lords, the case does not rest even there: it happens that Mr. Sullivan has in his possession copies of letters that he did write to colonel Fullarton, and answers that he received from colonel Fullarton; and your lordships will see from those letters, and particularly from the last letter that Mr. Sullivan wrote to colonel Fullarton, and from the answer which he received from him, that it was utterly impossible that any such directions should have passed from Mr. Sullivan to colonel Fullarton. I will not fatigue your lordships with going through the particular paragraphs in the affidavits, but the letters themselves are wholly inconsistent with such a supposition.

Lord Buckinghamshire's affidavit it was thought necessary to have, in order that there might be no pretence that any information, which could have been procured upon the subject, was kept back. Your lordships have likewise the affidavit of Mr. Fullarton, to whom it was stated, these instructions were sent by Mr. Sullivan; and colonel Fullarton swears most positively, that neither before he went to, nor when he parted from Mr. Sullivan, nor after he had left this country, did he ever receive from Mr. Sullivan any instructions whatever to inquire into the conduct of general Picton, and that if he had received any such, he should have thought it an insult. How can Mr. Sullivan be defended, if upon these affidavits he is not to be considered as freed from imputation? I know very well that colonel Draper's guilt does not stand aggravated on the one hand, or extenuated on the other, by the truth or the falsehood of this charge; but when your lordships find the object of bringing this business forward in the way in which it is—when the object of offering that as an extenuation, which cannot extenuate, is to fix upon Mr. Sullivan *now* that charge which was brought against him by the libel, I trust your lordships will think, that if I do a little overstep the strict line, I may be

forgiven for it, when observing upon the improbability of the fact itself. I am well aware of this, that all which colonel Draper has done since the hour of his conviction has been directed, not to the purpose of extenuating his own offence, but to the purpose of leading your lordships and the public to believe, that the charge against Mr. Sullivan is true.

My lords, there is more in the course which has been pursued upon this occasion than at first meets the eye. It is held out that colonel Draper believed what he has stated in this libel to be true. But, my lords, I cannot help saying that the affidavit produced, in which Dr. Lynch swears to these facts being true, raises no probable inference that colonel Draper at the time he published them believed them to be true. That rests entirely upon the state of things at the time when colonel Draper published this libel; and no step that he has taken since, no affidavit that he has produced in court has the least tendency to add to the probability of his having believed this at the time: but the object of it is to lead your lordships, and the public to believe, that the charge is true: *these affidavits are in fact merely republications of the libel.* They are repetitions of those charges which I state to your lordships to have been libellous in the original publication, and they have no other tendency but to raise a belief that the imputations contained in that libel published by the defendant, colonel Draper, are founded in fact. It was for that reason only that I ventured to make a few observations to your lordships upon the probability of the fact so stated in this affidavit of Dr. Lynch. It is in its own nature, I should be justified in saying, almost incredible; certainly upon its own statement it carries the highest degree of improbability with it. It is expressly contradicted by the affidavit of Mr. Sullivan, who must know whether it be true or false. It is expressly contradicted by the affidavit of colonel Fullarton, who must also know whether it be true or false; and the facts stated by Mr. Sullivan and colonel Fullarton are supported by the correspondence which Mr. Sullivan states to the Court. Under these circumstances if the point in issue between these parties was, whether the facts were true or not, I could have no doubt to what conclusion every rational mind must arrive. But that is not the point. The question for your lordships to determine is, what sentence you will pass upon colonel Draper, who under such circumstances as I have stated, without inquiring into the character of Mr. Sullivan, or indeed if with inquiry without respecting at all the result of that inquiry, has had the hardness to publish such charges as are contained in this libel—has had the hardness to persevere in that publication, after he was aware of the effect which that publication had produced on Mr. Sullivan,—and after he has been brought to his trial in this Court, and been convicted of the publication, still perseveres in the same course,

expresses no remorse or contrition for what he has done, but pursues the unusual course of stating to your lordship by his counsel, that it is a question for the public to decide, upon the conflicting affidavits in this case, whether the charge be true or false; and without the slightest apology to Mr. Sullivan for the part which he has taken against him, without expressing the slightest sense of the injury that he has offered to the person who has been so grossly injured by him, desires your lordships from respect to his feelings, to pass a light sentence upon him, who had no regard or consideration whatever for the feelings of Mr. Sullivan. I am sure your lordships will look at this case as one deserving the most serious attention, and in this day of libels will think that it ought to be visited with as severe a punishment as the Court usually pronounces upon such offences.

Mr. Garrow.—I feel it to be my duty to trouble the Court with some observations, but at no very considerable length. I think that the manner in which this case has been put, particularly by Mr. Marryat, renders it absolutely necessary that some observations should be made upon it, in addition to those urged by Mr. Attorney General.

It seems that even at this moment it is to be considered, that an appeal is to be made to the public to decide upon these conflicting affidavits this question (for there is no other to which that appeal can possibly apply), whether, after Mr. Sullivan had in the first instance, when he applied for leave to file this information, done what by the rules of the Court he knew he must do, before he could succeed in his application, viz. expressly, positively, and in terms deny that there was the slightest foundation for any part of the libel which had been published against him—after Mr. Sullivan had been examined as a witness on the part of the prosecution, not left to be called upon the part of the defendant, but had been asked a question (as to a fact which might have been proved by any body else, for it was only how long he continued in office) merely for the purpose of subjecting him to cross-examination—whether, after lord Buckinghamshire had been examined as a witness on the part of the prosecution for the same purpose, namely, that of subjecting his lordship also to cross-examination—whether, now in this last stage of the proceedings, after Mr. Sullivan (having read the new affidavit of Dr. Lynch) comes forward to repeat upon his solemn oath, what he had sworn before, that he never had the conversation with Dr. Lynch, which Dr. Lynch has stated—it appears, that it is now a subject upon which the public are to decide upon conflicting affidavits, whether there is one word of truth in any thing Mr. Sullivan has sworn, or indeed, whether the time is not now arrived, in which he ought to be driven from society to pass the rest of his days with the person, who is supposed to have been a

conspirator with him in doing that which is stated in the libel.

I am not here discussing this in order to receive the judgment of a public, composed of parties and influenced by passions, but I shall take the liberty of appealing to your lordships (which, by the constitution of the country, is the proper appeal for us to make on this subject), whether the only attempt,—not at defence, for it is not so pointed,—but whether the only attempt,—except the high character, which I am ready to admit this gentleman has received from the highest quarter,—whether the only attempt at extenuation does not totally fail. It has been said that colonel Draper believed this—well, be it so—I am not here to say he did not believe it; to me, and to your lordships, it is matter of no importance, whether he believed it, or not; but it is said farther, that the document before him was calculated to produce such a belief, or, as some of my friends have put it, to engender a rational persuasion in his mind that the conversation stated by Dr. Lynch had taken place.

My lords, to a person less zealous, to a person less affected with astonishment and abhorrence at that which he considered as the persecution of his former commander and friend general Picton, to a person of less talent than this gentleman professed to have, to a plain mind it appears that a person who read Dr. Lynch's affidavit, in his progress of asking his own mind and conscience, whether he would believe the facts stated, would have made some such reflection upon it as this—I think it would have occurred to him to have asked—how did this affidavit come to be made? If he had, he would have been told, why, there have been, unfortunately, dissensions between his majesty's commissioners at Trinidad; the island has been divided into parties; there has been a considerable degree of violence and party-spirit, a great number of persons thinking that general Picton has met with unmerited ill-treatment, and a great number of persons thinking that colonel Fullarton has conducted himself properly towards him. A gentleman in the island, holding a considerable station in the law, the agent of general Picton, has applied to Dr. Lynch for information upon this subject, and the declaration of Dr. Lynch is communicated in a letter to Mr. Gloster, the attorney general of the island, with this intimation of what the object of the writer is: "Permit me, sir, to add, that in consequence of the unmerited treatment colonel Picton has since received, it will give me pleasure if this communication can in any way tend to show that that treatment was premeditated." It would have occurred, I think, to a plain man, sitting down only for the purpose of investigating truth, and of bringing the delinquent, if he should be persuaded he was such, to just punishment, to have asked, may not the heat of party make this gentleman misconceive

something that has passed? he appears to be one of those who believe that general Picton has been ill-treated, and he states that it will give him pleasure, if this communication can in any way tend to show that that treatment was premeditated. I think such a plain man as I have alluded to, would have examined the affidavit, to have seen whether that was true, and if he had so done, it does not appear to me that he would have found any rational ground for believing the fact which is there stated.

The fact stated is this: that a physician from Ireland, having thoughts of settling at Trinidad, and having seen in several of the newspapers representations of the flourishing state of that island and invitations to go thither, presented himself, a mere stranger, and without any introduction, at the office of the secretary of state, and desired an interview either with him, or his under secretary; that he obtained an interview with the latter; that he stated that the object of his calling there was to know (that which undoubtedly the secretary of state communicates to any person) what encouragement would be given to him, if he settled in the island of Trinidad; that he was told "you represent yourself to be a physician, settled in Ireland, the encouragement given is not suited to your condition; all we can give is ten acres of land, and a few tools to cultivate the land," upon which the gentleman jocularly said, "oh! that would only enable me to make a botanical garden:" the business was then at an end; this gentleman, an entire stranger to the secretary of state, having no introduction, coming to him as any other person might do, to ask what encouragement would be given to settlers at Trinidad, it might be supposed that after the common ceremonies (which I should presume would not be long, for we know that gentlemen in office have not much time to spare for ceremony) these two gentlemen might part.

My lords, Mr. Marryat complains that the affidavit of Mr. Sullivan does not go far enough. Mr. Marryat says, he does not deny that he had a conversation with Dr. Lynch, he does not deny that he told him it might be as well for him to procure recommendations to the other commissioners, and that that might be beneficial to him. No, my lord, he does not, and for the plainest of all reasons, *that a secretary of state must necessarily see so many persons upon such a subject, that it would be marvellous if he could recollect even whether he had seen such a person or not, and much more marvellous, if he could recollect what he had said to him, and whether he had or not asked him as matter of civility, whether he had a letter of recommendation to any of the other commissioners besides general Picton.*—Is that the subject of inquiry? The subject of inquiry, is, did he at that time advise him to procure letters for the other commissioners, and if so, for what reason did he so advise him? Did he tell him they would be more useful to him? And

if so, why? because in all probability, the then governor Picton to whom he had letters, would in the course of six months be recalled; why? because colonel Fullarton had instructions; what, private instructions? no, because colonel Fullarton had instructions to investigate his conduct. Now, I would ask, is this conversation probable? I will go further: I know nothing of Dr. Lynch, and do not wish to throw out insinuations against him: I say he must have misconceived what passed, for that this is *impossible*.

Mr. Marryat says, that all that is imputed to Mr. Sullivan is, that he did this without authority; for that lord Buckinghamshire knew nothing of it, and the administration knew nothing of it. Then what is the charge against Mr. Sullivan? It is, that he basely, infamously, and without the knowledge of his superior, in opposition to what the government were then doing (who were sending out three commissioners to co-operate in the great work which was then going on), contrary to the commission which was then making out, was insidiously plotting with his private friend, colonel Fullarton, to undermine the authority of that commission—to destroy the interest of governor Picton, and to procure him to be brought home in consequence of private insidious instructions, which he, Mr. Sullivan, had given to colonel Fullarton to investigate his conduct. That is the charge.

Now, let any man ask, what is the probability of this? We know enough of men in office to know that they are so much in the habit of caution and circumspection, when acting with mere strangers, that it is next to impossible to imagine that they should enter into any discussion with strangers upon any matter of importance. This is a virtue; but it almost approaches to a vice, they are so circumspect and cautious lest what they say should be misconceived or misapprehended. But what is stated here? Why, that this base conspirator, endeavouring at once to destroy a man who was an object of the protection of that government of which he was a servant, breaking through the confidence reposed in him by the noble person with whom he was connected in office, was plotting with colonel Fullarton against the commission which was then preparing: as if he had said to a perfect stranger, "Sir, I am glad of an opportunity of communicating with a man of your rank and condition, and especially as you are a friend of governor Picton's, and seem to place your hopes of success in Trinidad on the patronage of governor Picton,—tell him his reign there will be extremely short,—tell him there are others apparently associated with him in order to carry on the business of the public, but I, Mr. Sullivan, shall control what lord Buckinghamshire can do on the subject. I am plotting with colonel Fullarton; and although every thing that will be found in this office shall bear a different complexion, and

shall make it appear as if I had been carrying on the great work the government have in hand, I am deliberately plotting against them. Go and tell governor Picton this, that I am self-convicted of a baseness and infamy which has hardly ever attached upon the conduct of any man in office." My lords, this is what colonel Draper states himself to have believed, and upon the belief of which he published the libel.

But it is said, that colonel Draper having indulged this belief,—which it is remarkable by-the-by is stated by colonel Draper only through his counsel, and not I believe in his affidavit, for that, if I am correct in my recollection, does not state he believed it—it is stated, that upon this (a strange proposition, as it appears to me), not only it was justifiable for colonel Draper to state it to the public, but that it was his duty, as a good subject, to lay it before the public, even at the expense of incurring legal guilt. I believe one of my learned friends stated it in so many words. I found no authority for this proposition in any thing that your lordship said to the Jury. On the contrary, I found your lordship asking, in language which I should be glad to repeat if I could, whether it is to be endured that any man, because another states of us that we are guilty of the most abominable crimes that mark—I am using now the language of colonel Draper—that mark the black catalogue of human vices, that if any man is to be found who will say that he believes the person charged to be guilty of that crime, is it to be said to-day that any man without investigation, without inquiring into the general character of the person charged, without inquiring into his general conduct, or without inquiring into the particular fact, may, as colonel Draper says he will do by Mr. Sullivan, arraign him before the British public, drag him from his hiding place, and from his den, and whilst he has a tongue and a pen, never leave him? May he do this, and afterwards state as an excuse for it, that he has heard somebody say so, or if you please, that somebody has made a voluntary affidavit to that effect, and that he therefore thought that he was not only justified in doing this, but it was his duty to do it?

Colonel Draper is stated to be, and I have no doubt is, in all other transactions, a very honourable and respectable man: for, colonel Draper, while on the one hand he will find that persons in our situation are not to be deterred from doing their duty, will also find that nothing which has passed will make me go one step further in this case. What that gentleman has said of me,* shall not oc-

* This refers to some severe animadversions in the defendant's publication, upon the manner in which the prosecution of general Picton was conducted by Mr. Garrow, and more especially upon the exhibition of a coloured drawing to the jury—*Vide antè*, p. 457, 458.

casion me to go further than I otherwise should. I felt that I could not shrink from my duty lest that should be misapprehended, but I will not go one step beyond it.

My lords, if colonel Draper meant fairly and honourably to vindicate his friend, and fairly and honourably to do his duty by him, he might have adopted another course. Is it fit that the character of every honourable man should be the subject of every garret-tee libeller who pleases to attack it? I am not applying this to the defendant: he is a man of a different description; but if *he* may do it, any man may be hired to-morrow to write down the fair fame of just and honourable men in society. But if colonel Draper really believed this, and meant fairly and honestly to investigate the matter, what should have been his course? He should, instead of "arraigning Mr. Sullivan before the British public," "dragging him from his hiding place," and "following him as long as he had a pen or a tongue," have made some inquiry, which it was competent to a person of his rank to do. It would not have been improper to have written to Mr. Sullivan, and to have said, "sir, I have heard a good character of you," (or "know nothing of you," whichever the fact might be) "but I tell you (perhaps it has not yet come to your knowledge) that Dr. Lynch has written a letter, and made an affidavit, which charge you with the grossest malversation in office; vindicate yourself if you can from this charge;" and if Mr. Sullivan could not vindicate himself, then it would have become proper to pursue the inquiry according to the laws and constitution of the country. But is it to be endured, because a gentleman takes up this as a true story, that he is to publish a book containing three hundred pages in language such as I never before read, reflecting thus grossly on the character of another?

My lords, I apprehend it would be extremely dangerous if such a publication could be passed over lightly. I do not go into the other part of the case, because I conceive it to be unnecessary. I hope that in the retirement to which your lordships are about to consign colonel Draper, his zeal may be somewhat abated, and that before he again proceeds to impute base and dishonourable conduct, arising from base and dishonourable motives, to other persons, he will at least inquire what their characters and conduct have been, from whence a judgment may be formed of what may have been their motives.

Mr. Sergeant *Bayley*.—My lords, I am on the same side. I shall not add one word to what your lordships have heard.

Mr. *Fell*.—I shall take up your lordships' time with merely one single observation. The only excuse that has been attempted to be made on behalf of colonel Draper is, that he has published nothing but that which he believed to be true. Now without inquiring whether at the time he published this, he did believe that Mr. Sullivan had acted in the

way stated in the libel, it will be in the recollection of your lordship, that it was stated by the attorney-general, at the time of the trial, that Mr. Sullivan had upon his oath, in the privy council, in the most direct and positive manner denied every atom of the charge. That could not but have come to the knowledge of colonel Draper. But after this he comes and files upon the records of your lordships court an affidavit re-asserting the libel which he had before published, which is, in effect, no less than offering in mitigation a charge of perjury against Mr. Sullivan.

Colonel Draper.—My lords, before the Court proceeds to perform its duty—

Mr. Attorney General.—Upon this occasion I take the liberty of reminding the Court of what is the usual course. I apprehend that a defendant, when brought up for judgment, may appear either by counsel, or himself, or both to pray the indulgence of the Court; if he appears by counsel, they must be heard before the counsel for the prosecution: or if he appears by himself, he ought to avail himself of his privilege before the counsel for the prosecution are heard.

Lord Ellenborough.—You are perfectly correct in what you state. The time for colonel Draper to have offered any thing for the consideration of the Court, would have been immediately before or after his counsel.

Mr. Attorney General.—Having said this, I will add that if this has proceeded from inadvertence; if colonel Draper's counsel did not inform him of the mode in which business is generally conducted in this court, and by that means he has lost an opportunity of stating any thing which he wishes your lordships to hear from him, I waive all objection.

Lord Ellenborough.—We cannot hear colonel Draper in reply to the observations of the counsel for the prosecution; but if there be any thing which does not range itself under that description, the Court will be willing to hear it.

Colonel Draper.—My lords, before the court proceeds to the final discharge of its duty, by delivering judgment upon me, I would most respectfully solicit its indulgence to say a few words on a point of my case, on which, from peculiar circumstances, I was not permitted to offer evidence at my trial, and upon which on that account my counsel on that day did not offer any observations, but which from the regard due to my own character, as an officer and a gentleman, as well, my lords, as to put the Court most fully into the possession of a matter of fact, which has been pressed on your lordship's attention by the attorney-general, in order, no doubt, to aggravate the heinousness of my offence—

Lord Ellenborough.—You must not advert to observations that have been made: you may enter (as you would have done, if you had spoken before the attorney-general had been heard) into the circumstances of the case, but you must not reply to the observa-

tions which have been made by the counsel.

Colonel Draper.—I only allude to the observations of the attorney-general on the day of my trial. With intention to diminish the quantum of that punishment which may be inflicted upon me, I am induced most humbly to ask your lordship's permission—I shall not trespass long, nor I hope exceed the due limit your lordship has stated—The attorney-general thought proper (from full confidence no doubt in the veracity of the instructions he received from his right honourable client, and his attorney,) to state to your lordship and the jury, in his speech upon my trial, as a fact—

Lord Ellenborough.—If there is any thing material of that kind, it should have been suggested by your counsel, or opened by yourself before. We have already gone beyond the usual limits of indulgence, but the indulgence upon this occasion must not exceed all limits. Is there any thing that you would wish to offer in mitigation of punishment? that the Court will hear.

Colonel Draper.—If your lordships wish, I will decline it.

Lord Ellenborough.—The Court do not preclude you from stating any fact, or reason, which you may think material for the mitigation of your punishment, but we cannot allow a detailed animadversion upon the speech which the attorney-general made at the trial. We should be guilty of great inattention to our own duty, if we suffered it.

Colonel Draper.—I will not trouble your lordships.

Lord Ellenborough.—Let the defendant be committed to the custody of the marshal, and brought up to receive the judgment of this Court on the last day of the term.

COURT OF KING'S BENCH.

November 28th, 48 Geo. III. A. D. 1807.

Colonel Draper came up to receive the judgment of the Court.

Mr. Justice GROSE.

Edward Alured Draper, you are to receive the sentence of this Court, having been convicted on an information, stating that before the printing and publishing of the libel contained in that information, to wit, on the first day of May, 1802, and from thence until the 31st day of May, 1804, the right honourable Robert lord Hobart was one of his majesty's principal secretaries of state, and that the right honourable John Sullivan was during that time the under secretary to lord Hobart: And that from the said first day of May, 1802, till the 27th day of September, 1802, one Thomas Picton, esq. was resident in, and had a certain command in and over his majesty's island of Trinidad: And also that before the printing and publishing of the said libel, to wit, on the 13th of October, 1802, his ma-

jesty, by certain letters patent under the great seal, had caused to be appointed William Fullarton, esq. the said Thomas Picton esq. and Samuel Hood esq. commissioners from our lord the king, for executing the office of governor and commander-in-chief, in and over the said island of Trinidad, and of his majesty's forts and garrisons then erected and established, or which should be erected and established within the same.

The information then states, that you unlawfully, wickedly, and maliciously, devising and intending to defame and vilify the character of the said John Sullivan, upon the first of May, in the forty-sixth year of our lord the king, did unlawfully, maliciously, wickedly, and scandalously, publish a libel, containing an affidavit, a letter, and also strictures and comments on that affidavit and letter, which are now before me; but they having been read so clearly when you were formerly before the Court, it is unnecessary for me again to state them.

In the conclusion of the information it is averred, that this publication is to the great scandal, infamy, and disgrace of the prosecutor, and in contempt of our said lord the king and his laws.

The meaning of the libel is plain and direct, as you intended it to be, and imputes to Mr. Sullivan in so many words the conduct of a black and cowardly tyrant, degraded by a long black catalogue of human vices; you state him to have pursued a dark and cowardly malignity; that he had sown the seed of discord, and shot the sharp and barbed arrow of doubt and distrust; that he had uncloaked the stiletto, and endeavoured to plunge it into the heart of one of our bravest and most meritorious officers; thereby imputing to him, in his conduct towards general Picton, all the vices of the most sanguinary villain, and the most dastardly conduct of the most despicable coward.

It is difficult to conceive what conduct in a gentleman of the rank and character of the prosecutor, could really have provoked such behaviour from you. As a motive to it, and in mitigation of punishment, it is sworn by some most respectable witnesses, that they are firmly persuaded you would not have written and published it, if, at the time of the publication, you did not believe it to be true. But when we take into our consideration the foundation of that belief, the contents of that affidavit, which was not called for, but which was voluntary, and the total improbability, nay almost impossibility of that conversation ever having passed between Dr. Lynch and Mr. Sullivan, we might have expected, that before you had acted on it, you would have paused and informed yourself by every possible means of its truth, and this even (if there was no other mode of satisfying you) by an application to the prosecutor himself. You ought to have inquired whether such a conversation could by possibility have passed, before

you published such a libel as the present. This would have been doing justice to the noble secretary and his under secretary, and would have been acting a part worthy of yourself. Had you taken that trouble, you would have avoided the unfortunate situation in which you now stand. You would have been informed of the facts in the affidavits now before me, that the prosecutor neither directly nor indirectly, ever did inform Dr. Lynch, or any other person, that in all probability general Picton would be ordered to return to England before six months, or that colonel Fullarton was instructed to investigate the past conduct of general Picton at Trinidad; and that what was sworn by Dr. Lynch had not passed, and what had passed might probably be misconceived by him. If you had taken the pains, which it was your duty to take, in inquiring into the truth of the affidavit of Dr. Lynch before you acted on it, it would have been impossible for you not to have given credit to the honourable testimony you would have received, and you would not have plunged yourself into the unfortunate situation in which you now stand.

It remains only to pass the sentence of this Court; respecting which, the like observations occur here, which have occurred before on so many occasions.

As it respects the public peace this is a very grievous offence. By you it has been committed with great deliberation, has been persisted in with great obstinacy, and is in no way expiated by any appearance of remorse or contrition. It is difficult to say what extent of punishment ought to be inflicted on a person, of whose character so many respectable and noble witnesses have spoke so highly and so honorably, and on a mind so framed and constituted as we must suppose yours to be. It is difficult to say, what punishment such a person ought to receive for such an attack on so pure a character as we find the prosecutor's to be: When the sober hour of reflection comes, it will inflict on your mind a wound more severe than any sentence this Court can pronounce. At the same time, as an example to others, and that they may understand that these sorts of calumnious and malicious libels shall not pass unpunished, in order to prevent others from committing the like offences, this Court, taking all the circumstances of this case into consideration, doth order and adjudge, that you pay a fine to the king of one hundred pounds, that you be committed to the custody of the marshal of the marshalsea of this court, and be there imprisoned for three calendar months, and at the expiration of that period, that you give security for your good behaviour for two years, yourself in five hundred pounds, and two sufficient sureties, in two hundred and fifty pounds each. And that you be farther imprisoned till such fine be paid, and such security given.

678. Proceedings in the Court of King's-Bench against EDWARD ALURED DRAPER, Esquire, for a Libel on WILLIAM FULLARTON, Esquire, deceased: 49 GEORGE III. A. D. 1808, 1809.

COURT OF KING'S-BENCH,

Monday, November 21, 49 Geo. III. A. D. 1808.

JUDGES.

The Right Hon. *Edward Lord Ellenborough*,
C. J.;

The Hon. *Sir Nash Grose*, Knt.;

The Hon. *Sir Simon Le Blanc*, Knt.;

The Hon. *Sir John Bayley*, Knt.

Mr. *Garrow*.—My lords, I humbly move for the judgment of the Court against colonel Draper, who on this indictment has allowed judgment to go by default.

Mr. *Dealtry* (of the Crown Office), proceeded to read the Indictment and the Affidavits on the part of the Prosecution. [These documents will be found in the Addenda at the end of this Volume.]

The following Affidavits were then put in, on the part of the Defendant, and read by Mr. *Dealtry*.

IN THE KING'S-BENCH.

The KING

against

EDWARD ALURED DRAPER, esq.

Edward Alured Draper, of Park-street, Westminster, in the county of Middlesex, lieutenant-colonel in his majesty's service, and captain of a company in the 3rd regiment of guards, maketh oath and saith, that William Fullarton, esq. deceased, formerly colonel of the late 23rd regiment of light dragoons, in or about Trinity-Term 1806, brought an action in this honourable court against the deponent, for publishing in the same book for which this deponent hath since the said William Fullarton's death been indicted, the following alleged libel:—
“I must now inform the public, from authority beyond all question, that an official report was made by general the earl of Carhampton, commander in chief of his majesty's forces in Ireland, respecting the unfaithful returns made by Mr. Fullarton, as colonel of a regiment under his lordship's command; that the original documents were transmitted to the adjutant-general's office, horse-guards, for the purpose of substantiating

the charge; and with honest heart-felt satisfaction do I record it, to the eternal honour of our illustrious commander in chief, that a public official communication of the above-mentioned circumstances was made by his royal highness to the secretary of state's office, previous to Mr. Fullarton's leaving England.—On this last transaction I shall not make a single comment.”

And this deponent saith, that he, in the vacation of the same term, pleaded not guilty, and also certain justifications, and thereby alleged in substance, that before the publication of the said book, and whilst the said William Fullarton was colonel of the said regiment, he had, as such colonel, made unfaithful returns, by returning a greater number of troop horses as effective to the said regiment, than in truth and in fact were effective thereto; and that an official report or communication had been made by the right honourable the earl of Carhampton, then commander in chief of his majesty's forces in Ireland, to the right honourable earl Camden, then lord lieutenant thereof, concerning the said returns; and that before the communication in this deponent's said plea after mentioned, certain claims and charges had been made, and were then subsisting, against the said William Fullarton, as colonel of the said regiment, concerning the appointments, &c. furnished for the same whilst he was colonel thereof; and that afterwards his royal highness, Frederick, duke of York, then commander in chief of his majesty's forces, understanding that it was intended to employ the said William Fullarton in some public capacity in the West Indies, made an official communication thereof to the right honourable lord Hobart, then one of his majesty's principal secretaries of state, at his office as such secretary. And this deponent further saith, that issue was joined in the said cause, and notice of trial was given this deponent's solicitor in the following Michaelmas term, immediately upon receiving which he this deponent applied to this court for commissioners to examine witnesses resident in Ireland and in Scotland, and obtained an order Nisi for that purpose, but the

same was afterwards discharged by this Court, on being opposed by counsel for the said William Fullarton, who then offered to produce at the trial of the said cause, all such persons as he, this deponent, should require from Scotland aforesaid, and also to admit as original, copies of all the various letters, returns, and other documents which this deponent conceived necessary to support the said justifications, which were deposited in different public military offices in Ireland aforesaid.

And this deponent further saith, that by the advice of his counsel he declined the said offer relative to the production of the persons resident in Scotland, and directed his solicitor to enter into the admissions proposed by the counsel of the said William Fullarton as aforesaid. And this deponent thereupon presented a memorial, praying that the said letters, returns, and other documents might be transmitted from Ireland to the Horse-guards, for the purpose of enabling both parties to procure authenticated copies, the prayer of which memorial was complied with, and the said letters, returns, and other documents were accordingly transmitted to the horse-guards in or about the month of January, 1807, shortly after which the said William Fullarton declined entering into any admissions whatever, and in consequence thereof the said papers were returned to the different offices from which they were originally taken; and this deponent was compelled to file a bill in his majesty's court of Exchequer, to obtain a commission for the examination of witnesses in Ireland and Scotland. And this deponent further saith, that the said William Fullarton having put in his answer, the said court ordered the commission, although the issuing thereof was again opposed by the counsel of the said William Fullarton. And this deponent further saith, that although the said Court ordered such commissions to be issued in the month of February, 1807, it was not until the month of May following, that his, this deponent's solicitor, obtained from the said William Fullarton's solicitor, the names of the commissioners to be inserted on his behalf, as he this deponent hath been informed and believes. And this deponent further saith, that in the month of June, 1807, certain admissions were entered into for the production of certified copies required to be produced by the said William Fullarton, and by this deponent, of the letters, returns, and other documents herein before alluded to, and more particularly specified in the schedules to the said admissions annexed; and by the same admissions it was also

stipulated, that such copies should be entitled to the same degree of credit as the originals themselves, if produced, would have been entitled to. And this deponent further saith, that in Michaelmas term, 1807, the said William Fullarton applied to the said court of Exchequer to dissolve the injunction issued by the said Court, on the ground that no proceedings had been had under the said commissions, which the said Court refused to dissolve, this deponent and his solicitor having made affidavit (as the fact was) that if any delay had taken place, they were unacquainted with the reason;—and his solicitor also deposing, that no application whatever, either directly or indirectly, had ever been made to him, complaining of any delay having taking place; and on this deponent's also deposing (as the fact was) that he then was, and always had been anxious for the trial of the said action. And this deponent further saith, that the commission issued into Scotland, with the proceedings taken thereunder, was executed and returned to this country, and filed on or about the 30th day of December last; and the commission issued into Ireland, with the proceedings taken thereunder, was also executed and returned to this country, and filed on or about the 1st day of February last.

And this deponent further saith, that the said William Fullarton having, as this deponent was informed and believed, and still verily believes, pending the said commissions, and shortly after they were issued, and before any evidence was had or taken thereunder, viz. on or about the 24th of June, 1807, caused a private examination, before the sheriff of Ayr, or his substitute, to be had and taken, of every person whom it was probable this deponent would examine in Scotland, and taken away with him the said examinations, and every paper relative thereto; and having also addressed a letter to one of the commissioners, and furnished papers, ex-parte, to the other commissioner to whom the said commission was directed, tending to prejudice this deponent, and also prevent the due execution of such commission, this deponent caused application to be made to the said court of Exchequer, to commit the said William Fullarton for contempt; and the barons of the said court were pleased, on the 29th day of January last, to make an order in the said cause that the defendant should show cause to that Court, on the morrow-week, why he should not stand committed to the custody of the warden of his majesty's prison of the fleet, for his contempt. And this defendant further saith, that on the 10th

day of February following, cause was shown against making the said order absolute, by several counsel on behalf of the said William Fullarton; and one of this deponent's counsel was heard in support thereof, when the said Court adjourned the final hearing until a subsequent day, but before the said motion was further proceeded in, and before the equity sittings of the said Court, after Hilary term, had commenced, viz. on or about the 13th day of the said month of February, he the said William Fullarton departed this life, and the present indictment was preferred against this deponent, on or about the 30th day of May last.

And this deponent, with regard to the said passage, or supposed charge against the said William Fullarton, of making unfaithful returns, as colonel of the said late 23rd regiment of dragoons, maketh oath and saith, that he hath heard and believes, that the said earl of Carhampton, on or about the 30th day of June, 1797, he being then commander in chief of the forces in Ireland, addressed a letter to major Maxwell, then of the said regiment, at Spring-Hill, Ayr, in Scotland, containing the words following:—"You will please to order over all your recruits, recruiting parties, and horses, and you will likewise join your regiment with all expedition." And this deponent further saith, that it appears by the monthly return of the said regiment, dated the 1st day of September, 1797, that the said major Maxwell, together with 31 men and 60 horses, had joined the said regiment prior to that day. And this deponent further saith, that in the said monthly return of the strength of the said regiment, which is signed by the said William Fullarton, 353 horses are returned in the body or front thereof, as effective to government, when on inspecting the muster-roll for the same period (which ought to correspond with the commanding officer's return, if true) it appears, and this deponent, therefore, verily believes the fact to have been, that 342 horses only were effective for that time, as deponent computes the same. And it further appears, by the correspondence herein after set forth, that of 353 horses so returned as effective to government, 14 were then in Scotland, or were represented by the said William Fullarton, to William Spencer, the lieutenant-colonel of the said regiment, to be so, and accordingly returned by him at the command of the said William Fullarton.

And this deponent further saith, that although in the body or front of the before-mentioned return, so made and signed by the said William Fullarton, 353 horses

and 364 men are returned as effective to the said regiment, yet in the detail written on the back of the said return, the total number of men as added together, is only 355, being 9 less than are returned in the body of it, and the total number of horses added together, is stated at 346, being 7 less than are returned in the body of it, and although 346 is put down as the result of the casting up of the horses at the different quarters, as specified on the said detail, yet this deponent saith, the said return is unfaithful in this respect also, that the different number of horses detailed do not, on being truly cast up, amount to 346, as the said detail purports, but to 326, and no more, being 27 less than stated in the body of the said return. And this deponent further saith, that in another part of the said return, and after a flourish by the pen, indicating a final end thereto, is written as follows, that is to say, N. B. 1 serjeant, 2 rank and file, and 14 horses returned on command on the face of the return, were left behind in Scotland. And this deponent further saith, that he believes the said N. B. was added in consequence of subsequent orders from the adjutant-general of his majesty's forces in Ireland, transmitted to the commanding officer of the said regiment of dragoons.

And this deponent further saith, he hath heard and believes, that some time during the period while he the said William Fullarton was colonel of the said regiment, that he the said William Fullarton, together with Mrs. Fullarton, his wife, called in their carriage drawn by four horses, on Richard Oswald, esq. then and now residing at Auchincruive, in Scotland, and that the said William Fullarton on that occasion desired the said Richard Oswald to look at the two leaders, which the said William Fullarton then remarked to him government paid for, as they were borne on the strength of the said regiment. And this deponent further saith, that it does not appear from the subsequent returns of the said regiment, that any horses or men joined the said regiment, from Scotland, after the said 1st day of September, 1797, until after the 1st day of October, 1798, as in the return dated that day are the following words:—"Not joined from Scotland since 1st September, 1797, 13." And this deponent further saith, that by permission from the heads of the different military departments in Ireland, he hath searched for any correspondence that might have taken place on the subject of the said horses. And this deponent, on such search, discovered a letter written to colonel Handfield, then military secretary

to the said earl Carhampton, by the said lieutenant-colonel Spencer, of the said regiment, dated the 31st day of October, 1797, of which the following is a copy, so far as relates to the said troop horses:—
 “Sir, fourteen recruit horses of the twenty-third dragoons being left in Scotland, who from different causes were not able to march with the others that joined the regiment sometime ago, and the regiment being greatly in want of horses, I wish to be permitted the honour of submitting to the commander in chief whether an intelligent officer had not better be sent to Scotland, and report to the regiment the actual state of the horses, in order that a party may be sent to bring over such of them as are fit for service and able to travel, if any such there are.—I beg leave to repeat, that the 23rd dragoons, from the dreadful havock made in the regiment by the glanders, and from other causes, are very much dismounted, and a number of very fine men rendered non-effective, from the want of horses, arms, and other necessary appointments.”
 And this deponent further saith, that the said colonel Handfield, on the 2nd day of the following month, replied as follows:—
 “Sir; I have laid before the commander in chief, your letter of the 31st ultimo, proposing to send to Scotland an intelligent officer, to report the actual state of 14 recruit horses, which, from different causes, were not able to march with the others that joined the regiment some time ago, and I am commanded by his lordship, in reply, to desire you will be pleased to report the particular reasons assigned to you why each horse did not march with the others to join the regiment, where and in whose care they are now left, when and by whom purchased, and stating fully, for his lordship’s information, every particular respecting them that has come to your knowledge.” And this deponent further saith, that on the 5th day of the same month of November lieutenant-colonel Spencer returned the following answer to colonel Handfield (that is to say):—
 “Sir; In reply to your letter of the 2nd instant, containing the orders of the commander in chief that I report the particular reasons assigned to me why each horse of the 23rd dragoons of those left behind of the horses recruited in Scotland, did not march with the others to join the regiment, where and in whose care they are now left, when and by whom purchased, &c.—I have the honour to state, that these horses, being recruited by colonel Fullarton, and presumed to be in his possession, no particular report of them has ever been made to me, nor am I enabled to give any information to lord Carhampton respecting them; they were returned

to the regiment by colonel Fullarton’s command, and I considered it my duty to return them to government.”
 —And this deponent further saith, that on the said 8th day of the said month of November, colonel Handfield made the following reply to lieutenant colonel Spencer (that is to say): “I have laid before the commander in chief your letter of the 5th, in answer to mine of the 2nd instant, and I am commanded by his lordship to acquaint you, that he considers the officer in command of the regiment, at quarters, as responsible to him;—that colonel Fullarton having been lately with the regiment, every necessary information respecting those 14 recruit horses should have been procured from him;—his lordship, therefore, desires you will obtain full information on this subject, and transmit, to be laid before the commander in chief, special answers to the several queries I had the honour to state to you, by his lordship’s command, in my letter of the 2nd instant.” And this deponent further saith, that lieutenant colonel Spencer, on the 11th day of the same month, returned the following answer to the said letter (that is to say):
 —“I have the honour of your letter of the 8th instant, which states that the commander in chief considers the commanding officer in quarters responsible to his lordship;—that colonel Fullarton having been lately with the regiment, every necessary information respecting the 14 horses left in Scotland should have been procured from him. In reply to the above, I humbly beg leave to observe, that I did make every inquiry with respect to the horses in question, not that I considered any responsibility as attaching to me, the horses being recruited by the colonel of the regiment, in another kingdom, and still there;—but from a wish to be informed, as far as I was able, of every matter and circumstance relative to the regiment.—Colonel Fullarton having come immediately from London to Dublin, did not appear to be well instructed in the matter himself, and I had no other source whence to give information. The horses were recruited by colonel Fullarton, or received by him as drafts, and are at the colonel’s house, in Scotland, under the care of his agent and a dragoon of the regiment;—the period of their being recruited has been given in with the recruiting accounts to the agents, by colonel Fullarton.—Why each horse did not march with the others the colonel must point out, but of their present state and their ability to join the regiment, or the contrary, would, with the humblest submission, I presume, be best ascertained by sending an officer to Scotland to inspect them (colonel Fullarton being in

London or its immediate neighbourhood), as I have already had the honour to submit to the commander in chief." And this deponent further saith, that the several extracts and copies herein before set forth, except the said letter, dated the 31st day of October, have been carefully compared, by this deponent, with certified copies thereof, under the hands of the commissioner nominated by and on the behalf of this deponent, and by them transmitted to this deponent's agent, and now in his possession, and are part of the documents agreed to be admitted authentic, as aforesaid.

And this deponent further saith, that while he was in Ireland, he inspected the forage accounts of the said regiment, in order to ascertain to whom the forage money for the 14 horses stated to be in Scotland had been paid, that he, this deponent, might, with the greater certainty direct the necessary inquiries to be made in that kingdom. And this deponent further saith, that among the vouchers passed and allowed for forage, he, this deponent, discovered a receipt, of which the following is a copy (that is to say):—"Received from the paymaster of the 23rd dragoons, the sum of 300*l.* 15*s.* 7½*d.* in full for horses at forage, by colonel Fullarton, in Scotland, Ayr, 16th of July, 1798, John Bruce."—And this deponent hath heard and believes, that the said receipt was likewise transmitted to this deponent's agent, and an authentic copy was by such agent delivered over to the solicitor of the said William Fullarton. And this deponent further saith, that it appears from the forage vouchers of the said regiment, that the amount of the said receipt has been passed to the credit of the said regiment;—and therefore this deponent believes the same hath been allowed to the said William Fullarton. And this deponent, from the strict inquiries he directed to be made, the various information he hath collected from persons well acquainted with Ayr and its vicinity, and with the foraging of horses in Scotland for the said regiment, he verily believes that no person of the name of John Bruce was ever employed by the said William Fullarton, or otherwise, to supply forage for any horses belonging to the said 23rd regiment of dragoons, that no such payment was in fact made, but that the said receipt is a fabrication and an imposition upon the government of the country.

And this deponent further saith, that he hath repeatedly been informed, by sir Samuel Hood, K. B. and one of the commissioners for the island of Trinidad, in the said indictment mentioned, at the time therein set forth, and verily believes, that the charge against colonel Thomas Pic-

ton, in the said indictment mentioned, was brought against him by the said William Fullarton, entirely contrary to the opinion and belief of the said sir Samuel Hood. And this deponent further saith, that the affidavit hereunto annexed, was sworn by the said sir Samuel Hood for the purpose of producing to this honorable court, when this deponent attended to receive the judgment thereof on a prosecution against him by the right hon. John Sullivan, for another passage in the same book, and it would have been produced accordingly, but that it did not come to hand early enough for that occasion, and that the absence of the said sir Samuel Hood from this country, alone deprives this deponent of the testimony of the said sir Samuel Hood, of the correct truth of many of the material facts stated in the passages for which this deponent is now indicted, and to the correctness of which facts the said sir Samuel Hood hath frequently expressed to this deponent his willingness to bear testimony, in the most solemn and unequivocal manner. And in particular, he this deponent hath been informed by sir Samuel Hood, and he verily believes, that when an attempt was made by the said William Fullarton to examine into the previous government of the said island, the same was publicly, forcibly, and with the utmost earnestness on the part of the said sir Samuel Hood, not only deprecated, but the veracity of the said William Fullarton in other concerns was impeached and maintained before his majesty's council of the island of Trinidad; and that such impeachment was supported and sustained by all the members of that council but one. And this deponent further saith, that he hath likewise been informed by the said sir Samuel Hood, and verily believes, that the said sir Samuel Hood, in the presence of the council of the said island, addressed the said William Fullarton, in the words, or to the effect set forth in fol. 52 and 53 of the publication for part of which this deponent is indicted. And this deponent further saith, that from his this deponent's knowledge of the said William Fullarton, and from the observations he had an opportunity of making personally as military secretary to the late general Grinfield, and from the information this deponent has received from the said general and the said sir Samuel Hood, and from various other honourable and respectable persons, this deponent verily believes, that the motives which actuated the said William Fullarton in the prosecution alluded to by the said indictment, were not the result of a feeling or sense of a public duty, but proceeded from motives of private revenge or resentment.

And this deponent further saith, that

in the depositions returned to the mandamus alluded to in the said book and indictment, the principal inhabitants of the said island did bear testimony to the honourable and upright conduct of the said Thomas Picton, as stated in this deponent's said publication, from fol. 187 to 198 inclusive. And that the said William Fullarton, in a book published by him respecting the affairs of Trinidad, under the title of "A Refutation of the Pamphlet which Colonel Picton lately addressed to Lord Hobart," speaking of this deponent, makes use of the following words: "I shall not be deterred by any insolence of major Draper, nor from any of the confederated band leagued and colleagued to support the turpitudes of that cruel and vindictive governor." And this deponent saith, he humbly conceives that those parts of the return to the said mandamus which are set forth in page 161, and several subsequent pages of his this deponent's said publication, authorize a conclusion, that the catholic curate of the parish in which Luisa Calderon in the same indictment named was born, furnished Pedro Vargas and Juan Montes with fabricated certificates of her baptism and age. And this deponent hath heard and believes, that the said curate, in consequence thereof, was afterwards sent to prison, at the instance of the vicar-general of the said island. And he hath also heard and believes, that the said Luisa Calderon was taken by Mrs. Fullarton in her carriage, and introduced by her to some of her female acquaintances in Scotland; and he has no doubt either of the authenticity of the letter set forth in fol. 184 of this deponent's publication, or of the truth of its contents, except that the word Argyleshire has by a mistake been printed instead of Ayrshire. And this deponent further saith, that he was present at the trial of the said Thomas Picton, which preceded this deponent's said publication, and that the principal witnesses produced by the said William Fullarton in support of the prosecution aforesaid, besides the said Luisa Calderon, were the said Juan Montes, and the said Pedro Vargas, and that in page 209, and in several following pages of the said publication, are correct copies of extracts from depositions made concerning the said Juan Montes, and returned to the said mandamus; and that pages 220, 221, and 222, contain a representation also given upon oath, and returned with the said mandamus, of the private examination of witnesses at Trinidad, in the presence of the said William Fullarton himself.

And this deponent saith, that on the day following that on which process was

issued against this deponent in the said action at the suit of the said William Fullarton, another process was also issued by the then attorney of the said William Fullarton, against this deponent, at the suit of the said Juan Montes, of being a bad and useless pioneer, a deserter from the Havannah, and very generally believed in Trinidad to be a spy to the Spanish government. And this deponent further saith, that the said Juan Montes having declared in such action, this deponent pleaded a justification thereto, and a commission was issued and executed at the island of Trinidad, in such last-mentioned action; and the said commission having been returned to this country in the month of August 1807, this deponent, in the following term, caused such action to be nonprossed, but hath been unable to obtain any costs from the said Juan Montes, who has quitted this kingdom for Trinidad. And this deponent hath seen a letter from the attorney-general of the said island, the contents of which he verily believes to be true, wherein the said attorney-general writes that the said Juan Montes had stated that he was extremely sorry for the part he had so taken, and that he had been pushed on to act as he did, by the said William Fullarton. And this deponent believes, that the governor of Trinidad aforesaid, refused the said Juan Montes the liberty of residing there, unless he produced bondsmen to be answerable for his good behaviour, and that bond had been given accordingly. And this deponent further saith, that the written evidence and documents referred to in pages 245 and 246 of the said publication, are all genuine and correct. And this deponent further saith, that the said William Fullarton from time to time, as well before as pending the before-mentioned prosecution of the said Thomas Picton, printed and published, and employed others to print and publish various tracts and pamphlets and books reflecting in the grossest manner on the conduct of the said Thomas Picton, the said sir Samuel Hood, the said general Grinfield, this deponent, and various other persons, who, from their own local knowledge of facts, were enabled to contradict the false assertions of the said William Fullarton. And this deponent further saith, that the said William Fullarton, having, in one of his said publications which he forwarded, as this deponent verily believes, to most of the members of his majesty's most honourable privy council, and to other persons, whilst his charges against the said Thomas Picton were under consideration, asserting that he never had any conversation with the

said general Grinfield, to the prejudice of the said Thomas Picton, relative to the affairs and government of Trinidad, but that he had purposely avoided saying any thing to general Grinfield that might rouse him against the said Thomas Picton, he this deponent addressed a letter to the said Thomas Picton, in which this deponent, after quoting the above extract from the said publication, wrote as follows: "I cannot but suppose that he has purposely forgotten a long private conference which took place between general Grinfield and himself on his arrival at Barbadoes from England, and from the subsequent and immediate declaration of general Grinfield, that 'apprehending a disagreement between colonel Fullarton and brigadier-general Picton, he would take care to steer clear of all disputes not military,' it is natural to infer that arguments had not been wanting to prepossess general Grinfield with an unfavourable opinion of your conduct and actions." And this deponent further saith, that the said general Grinfield had, in point of fact, a long private conference with the said William Fullarton, at Barbadoes, prior to the said William Fullarton's arrival at Trinidad. And that, immediately after such conference, the said general Grinfield did address himself to this deponent, in the words or to the effect above set forth. And this deponent further saith, that the said general Grinfield, on his arrival at Trinidad, took up his residence at the government-house, occupied by the said William Fullarton, as first commissioner. And after remaining there a week, quitted the same, and went to a public hotel, in consequence of frequent interruptions to official business, and a disposition on the part of the said William Fullarton to enter argumentatively into the circumstances of the quarrel between himself and the said Thomas Picton, as the said general Grinfield informed this deponent, and as he this deponent verily believes. And this deponent wrote and sent the said letter to the said Thomas Picton, as a friend, and without any idea that the same would ever be printed; but the same was afterwards published by the said Thomas Picton, with this deponent's assent. And this deponent saith, that in a subsequent quarto publication, by the said William Fullarton, published before this deponent's said publication, he the said William Fullarton (amongst other things), speaking of the said letter, states as follows:—"Before I conclude my remarks on this part of the misrepresentation brought forward by colonel Picton, I must add some animadversions on the declarations

of major Draper, and on the position which he had the insolence to assert, that I have not truly represented facts, but that such ill-grounded assertions are adduced as must subject the writer to the heavy charge of a breach of veracity. In ordinary cases the only answer to such remarks would be, to make the major eat up his words, or else to cram them down his throat with the point of my sword." And this deponent further saith, he hath heard and believes, that some time in or about the year 1802, the then commander in chief of his majesty's forces, in Ireland, officially transmitted to field marshal, his royal highness the duke of York, petitions from William Spencer, of Belfast, boot-maker, and Michael Morris, of Tuam, sadler, respectively complaining that the said William Fullarton was very considerably indebted to them for sadlery and boots, furnished the said regiment, and that they were unable to procure payment thereof. And this deponent further saith, that he hath also heard and believes, that a memorial was also presented by the said William Spencer to the said duke of York, complaining of the conduct of the said William Fullarton, in not discharging the demand of the said William Spencer, amounting to 1,000*l.* or thereabouts, and praying his royal highness's interference for the recovery thereof. And this deponent further saith, that after his royal highness had made minute inquiries into the facts contained in the said memorials, he did, as this deponent hath heard and believes, on the 15th day of June, 1802, make an official communication thereon to the right honourable lord Hobart, the secretary of state for the colonial department, of which his royal highness permitted this deponent to take a copy, and which is in the words following, (that is to say):—"My lord, understanding that it is intended to employ colonel Fullarton in some public capacity, in the West Indies, my duty obliges me to acquaint your lordship, that there are such serious claims against colonel Fullarton, by the persons furnishing clothing and appointments to the 23rd regiment of light dragoons, for payment of their demands, that I have to point out to your lordship the expediency of colonel Fullarton not being allowed to proceed on the intended service until he shall have settled the demands against him to the satisfaction of the Irish government and the secretary at war.

"FREDERICK."

And this deponent saith, it appears by the certificates of the auditor-general of Ireland, authenticated as aforesaid, dated in January last, that there then remained

due from the said regiment to government, on balance of forage accounts, upwards of 2,000*l*. And lastly this deponent saith, that no copy of this deponent's said publication hath been sold by his direction, or privity, since the information herein-before mentioned was filed against him.

EDWARD ALURED DRAPER.

Sworn in court, this 16th day of November, 1808.

BY THE COURT.

EDWARD ALURED DRAPER.

Re-sworn in court this 21st day of November, 1808.

BY THE COURT.

• IN THE KING'S-BENCH.

Sir Samuel Hood, K. B. a rear-admiral in the royal navy, maketh oath and saith, that whilst he was third commissioner for the island of Trinidad, some time in the month of March, 1803, colonel William Fullarton, first commissioner for the said island, brought before the commissioners then sitting, and read, several charges against brigadier-general Thomas Picton, relating to his conduct as governor of that island, prior to the brigadier-general being superseded by the commissioners;—that it also appeared, on the oath of some of the inhabitants, taken before this deponent and the said brigadier-general Picton, that the said colonel Fullarton had caused secret investigation to be made of the said brigadier-general's conduct, as former governor of the said island. And this deponent further maketh oath and saith, that he did not know of any order or instructions to the commissioners to investigate or inquire into the conduct of the said brigadier-general Picton, the former governor.

SAMUEL HOOD.

Sworn at Portsmouth, in the said county, the 21st day of November, 1807, before me (the name Fullarton having been first written over the obliteration on the 20th June).

M. Greatham, Jun. a commissioner, &c.

IN THE KING'S-BENCH.

The KING

Versus

EDWARD ALURED DRAPER Esq.

CHARLES FEW, of Great James-street, Bedford-row, in the county of Middlesex,

* N. B.—The reading of this affidavit (which was annexed to the foregoing affidavit of colonel Draper) was objected to by the Court, as having been sworn before the present indictment was preferred.

gentleman, maketh oath and saith, that William Fullarton, esquire, deceased, having brought an action in this honourable court against the above-named defendant for a libel, and the above-named defendant having pleaded several pleas of justification thereto, it became necessary in support thereof, to produce certain returns, regimental accounts, letters, and other papers which were deposited in different military offices in Ireland in support thereof. And this deponent further saith, that after various proposals made by this deponent for the purpose of saving the heavy expense attending the production thereof by official persons, the admissions hereunto annexed were entered into, for the purpose of enabling both parties to have the benefit of the papers by them therein respectively required, and the said admissions were accordingly signed on or about the 4th day of June, 1807, by John Wilkinson, of Red-Lion-square, gentleman, the then solicitor of the said William Fullarton, and by this deponent on behalf of the above-named defendant. And this deponent further saith, that in the month of January last, he, this deponent, received a packet from Ireland, in which was an inclosure indorsed as follows;—“Fullarton against Draper.—Copies of various exhibits, certified, attested, and sealed.—Charles Few, esquire, Great James-street, London.—To be opened in presence of the attornies of the plaintiff and defendant.—The seal of Boyle Travers, (L. S.) the seal of W. Furlong, (L. S.)” And this deponent thereupon waited with the said inclosure under the seals aforesaid, on the said Mr. Wilkinson, and tendered the same to be opened before him for the purpose of attesting the inclosures, but the said Mr. Wilkinson requested this deponent not to open the same in his presence, and gave this deponent as a reason for such request, that he had been instructed by the said William Fullarton, not to concur in any step which would in any manner assist the above-named defendant, in that respect, or to that effect. And this deponent thereupon waited on Mr. Ayrton, who acted as the agent of the said Mr. Wilkinson in the said cause, and in like manner tendered the said sealed packet, and the said Mr. Ayrton in like manner refused to attest its inclosures, or to consent to the seals thereon being broken. And this deponent also in like manner received under the seal of the quartermaster general's office, and of the said William Furlong, papers purporting to be, and which he, this deponent, in point of fact believes were the original monthly returns of the commanding officer for the time being, of the late 23rd regiment of

light dragoons, from the 1st day of August, 1797, to the 1st day of December 1798, excepting only for the months of September, 1797, and January, 1798. And this deponent in like manner received under the seal of the quarter-master-general's office aforesaid, papers purporting to be, and which he this deponent in point of fact believes were the original vouchers for the forage for the said regiment, and the forage accounts from the 1st day of July, 1797, to the 30th day of June, 1799, with the exception only of the receipt hereinafter set forth. And this deponent also tendered the said packets respectively to the said Mr. Wilkinson, who in like manner refused to interfere therewith; and this deponent was therefore under the necessity of opening the said packets, without the presence of any person in behalf of the said William Fullarton. And this deponent also received from the said William Fullarton, by the post, a paper, purporting to be, and which this deponent believes in point of fact was, the original monthly return of the said regiment, signed by the said William Fullarton, and dated 1st September, 1797, a copy whereof is hereunto annexed, and a paper writing, purporting to be, and which this deponent believes in point of fact was, an original receipt, of which the following is a copy:—"Received from the paymaster of the 23rd dragoons, the sum of 300*l.* 15*s.* 7½*d.* in full for horses at forage by colonel Fullarton, in Scotland. Ayr, 16th July, 1798. John Bruce."—And this deponent saith, that the same was, as he this deponent believes, taken out of the packet of foreign vouchers, as in such packet was a copy thereof, either written or authenticated by the said William Fullarton. And this deponent further saith, that shortly afterwards Mr. Pasmore became the attorney of the said William Fullarton, and waited on this deponent, and stated to him, that as the said William Fullarton had originally entered into the said admissions, he should certainly concur in any formal act necessary to identify the several papers aforesaid. And this deponent thereupon produced to the said Mr. Pasmore, all the said several papers, and the envelopes in which they were respectively received. And the said Mr. Pasmore authenticated such of them as this deponent considered important, by signing his initials thereto. And this deponent procured copies to be made of such of the said papers as Mr. Pasmore required to be furnished with, and delivered the same to him, together with the said copy of the said receipt. And this deponent saith, that the said original receipt and the last-mentioned original return, together with copies of the several letters

set forth by the said defendant in his affidavit in this prosecution, sworn this day, and the copy of the muster-roll therein also referred to, were part of the papers so acknowledged by the said Mr. Pasmore, to be authentic as aforesaid, excepting only a certain letter dated 31st day of October, 1797, which, by some inadvertence, was not enumerated in the schedule to the said admissions, and therefore not forwarded by the said commissioners, or authenticated by the said Mr. Pasmore.

C. FEW.

Sworn in Court, this 16th day of November, 1808.

By the COURT.

SCHEDULE A.

FULLARTON *versus* DRAPER.

Statement of Papers required to be produced on the part of the Plaintiff.

1797.

July 11, Letter from the earl of Carhampton to Messrs. Corry, Browne, and Bristow.

Aug. 21, Statement to earl Carhampton by colonel Fullarton.

Aug. 24, Letter from colonel Fullarton to the earl of Carhampton.

Sept. 11, Letter from colonel Handfield to colonel Fullarton.

Sept. 14, Copy of a letter from colonel Handfield to colonel Fullarton.

Sept. 15, Copy of leave granted by the earl of Carhampton, and intimated by colonel Handfield and by general Craddock for colonel Fullarton to return to England.

Oct. Copy of leave of absence, notified by major-general Goldie.

Dec. 26, Letter from colonel Fullarton to colonel Handfield.

Copy of orders for calling in all recruiting parties belonging to regiments on the Irish establishment.

1798.

April, Copy of orders for renewing the recruiting service.

1802.

Oct. 18, Copy of district orders, by brigadier-general Hart, respecting 23rd regiment of light dragoons.

SCHEDULE B.

Statement of Papers required to be produced on the part of the Defendant.

In the Adjutant-General's Office.

Authenticated copy of adjutant-gen.

Hewett's letter to commanding officer of 23d dragoons, dated November 16, 1797.

Adjutant-gen. Goldie's inspection returns, and report of 23rd dragoons, for 1797.

In the Quarter-Master-General's Office.
Original monthly returns of the late 23rd dragoons, from August 1, 1797, to Nov. 1, 1798 inclusive.—Forage account from July 1, 1797, to June 30, 1799, together with a receipt, or voucher, signed John Bruce, dated Ayr, July 16, 1798.

Major gen. sir S. F. Craddock's, and brig.-gen. Clinton's reports to the lord lieutenant of balance due from regiment.—Dated respectively January 24, 1804, and July 18, 1805.

In the Military Secretary's Office.
Authenticated copies of correspondence between colonel Handfield and commanding officer of 23rd dragoons, attending to dates specified, viz. 1797.

June 30, Lord Carhampton to major Maxwell.

Nov. 2, Col. Handfield to col. Spencer.

Nov. 5, Col. Spencer to col. Handfield.

Nov. 8, Col. Handfield to col. Spencer.

Nov. 11, Col. Spencer to col. Handfield.

In the Office of Secretary of State for the Military Department.

Copies of letters of sir E. Littlehales to commanding officer of 23rd dragoons, respecting balance on forage account, dated March 15, 1804, and October 21, 1805.—Letter written and sent by col. Fullarton to col. Handfield, dated in October or November, 1797.

In the Muster-Master-General's Office.
Muster rolls of 23rd dragoons, from October 1, 1796, to March 31, 1798, inclusive.

In the Auditor's Office.
Certified statement of balance due to government, from late 23rd dragoons, on forage accounts, at the period of reduction, in 1802.

In the Treasury Office.
Certificate relating to the above balance.

J. WILKINSON, Attorney for the Plaintiff.

C. FEW, Defendant's Agent.

IN THE KING'S-BENCH.

Between

WILLIAM FULLARTON, Esq. Plaintiff,

and

EDWARD ALURED DRAPER, Esq. Deft.

It is mutually agreed between the plain-

tiff's attorney and the defendant's attorney, that the following admissions should be made upon the trial of this cause (that is to say):

That the several papers mentioned in the schedules A and B hereto annexed, as deposited in the different public offices, in Ireland, are authentic and original papers of the respective dates therein expressed, and sent by the several persons whose signatures they purport to bear, or in whose name they purport to have been written.

That no other evidence of their being authentic papers and coming out of the different public offices, in Ireland, where, by indorsement or otherwise they appear to have been deposited, shall be required at the trial, than proof of the hand-writing of Boyle Travers, and William Furlong, of Dublin, esquires, upon copies of those papers, to a certificate of their having compared the same copies or papers with the originals, and stating them to be true copies thereof.

That in case any of the said original papers, if actually produced by the several persons who have the legal custody thereof respectively, at the public offices in Ireland, with proof the hand-writings subscribed thereto would be admissible evidence, no objection shall be made to the admissibility of the copy, but each copy shall be liable to all objections which might be made to the original, if produced and proved to have been signed by the party or parties whose name or names is or are subscribed thereto, or to have been officially returned to or sent from those offices respectively, according to the dates thereof.

That the several letters stated in the said schedules were, in fact, written by the persons in whose names they severally purport to be written, and were received by the persons to whom they appear to be addressed, subject to all objections concerning the admissibility in proof of the original letters, in case the originals were produced and the hand-writings were verified. Dated this 4th of June, 1807.

J. WILKINSON, Attorney for the Plaintiff.

C. FEW, Defendant's Agent.

IN THE KING'S-BENCH.

The KING

against

EDWARD ALURED DRAPER.

The right honourable Henry Lawes, earl of Carhampton, of Paine's Hill, in the county of Surrey, maketh oath and saith, that in the year 1797, he, this deponent, was commander in chief of his majesty's forces in the kingdom of Ire-

land, and that the right hon. earl Camden was, during the same period, lord lieutenant thereof. And this deponent further saith, that in the said year, 1797, the late 23rd regiment of Light Dragoons under the command of colonel William Fullarton, since deceased, was on service in Ireland. And this deponent further saith, that in the month of June, 1797, a letter to William Maxwell, the major of the said regiment, at Spring-Hill, near Ayr, in Scotland, was sent by this deponent's directions, directing him to order over to Ireland, all his recruits, recruiting parties, and horses, and to join the said regiment with all expedition. And this deponent further saith, that it appears by the monthly return of the said regiment for September, 1797, that the said major Maxwell, together with 31 men and 60 horses, joined the said regiment in the succeeding month. And this deponent perfectly well recollects that he was subsequently, and in the same year, much displeased with the conduct of the said William Fullarton, as well on account of his returning certain troop horses as effective, to government, which upon investigation were afterwards discovered by this deponent to be at grass, or upon his the said William Fullarton's farms in Ayrshire, and were nevertheless borne on the strength of the said regiment for a very considerable time, as also on account of the subsistence money payable to the men being in arrear. And this deponent further saith, that complaints of the last-mentioned circumstances having been preferred to this deponent, he, this deponent made minute inquiries into that fact, which this deponent ascertained to be true, from the agent of the said regiment.

And this deponent further saith, that upon his questioning such agent on the subject, he this deponent was informed by him, and verily believes the fact to be so, that the said William Fullarton had himself drawn the said subsistence money, and had applied it towards discharging debts due from the said William Fullarton, for other purposes. And this deponent further saith, that he thereupon sent for the said William Fullarton, and strongly animadverted on his conduct in the particulars aforesaid. And this deponent further saith, that although he cannot charge his memory at this distance of time with every particular relating to the charges before mentioned, yet this deponent well recollects, that from the facts then disclosed, the impression left on this deponent's mind was, and still is, that the said William Fullarton had been carrying on a system of peculation, and which

this deponent found considerable difficulty in putting a stop to. And this deponent further saith, in consequence of representations made to this deponent, he was obliged to cause the subsistence money due to the troops, to be paid out of other funds.

CARHAMPTON.

Sworn at No. 17, Bruton-street,
this 8th day of November, 1808,

Before me,

B. WELLS, a commissioner, &c.

Mr. *Marryat* stated that the returns were in court, and that two of the principal things to be attended to in the affidavits on the part of colonel Draper, were these returns, which were signed in September 1797, and the receipt signed John Bruce.

Mr. *Garrow*.—My lords, in consequence of the death of colonel Fullarton, the action which was brought by him has abated. As you will perceive by the affidavits, this is a prosecution which has been instituted by his widow, which is certainly a great disadvantage with reference to what I am about to solicit from the court; because, as to a portion of that which has been stated in the affidavits on the part of the defendant, it would have been extremely important that colonel Fullarton (had he been alive) should have personally explained it. But, situated as I now am, I ask for an opportunity to answer the affidavits that have been read on the part of the defendant;—I do not ask that colonel Draper should be committed.

Lord *Ellenborough*.—Let it stand over, in order that the prosecutor may have an opportunity of answering these affidavits, or as much of them as can be answered.

Mr. *Garrow*.—My lords, probably, from the state of business, your lordships may not be able to pronounce judgment in this case in the course of the present term.

Lord *Ellenborough*.—That, I think, is extremely likely.

Mr. *Dauncey*.—I trust the Court will think it right, that those affidavits only should be read which are filed by a certain day.

Mr. *Garrow*.—I make no offer of that sort,—that, I conceive, is contrary to the constant practice of the Court; I shall be prepared during the present term, if the gentlemen on the other side wish it.

Mr. Justice *Grose*.—It is impossible to do it in the present term.

Mr. *Marryat*.—I submit that the case is now in that situation that if they make more affidavits, we also should be at liberty to put in other affidavits.

Mr. *Garrow*.—My lords, I could not pos-

sibly foresee that the cause would take this turn, and would be put off on account of other libels which have been brought forwards in the shape of affidavits. Perhaps the Court may think we have been inattentive to our duty in not having objected to the reading of some of these affidavits. As far as I am concerned, I have not thought fit to interpose, but have permitted that the defendant should be allowed to state every thing which he and those with whom he has advised, have thought proper to state. The new matter which has been introduced by him into affidavits made in mitigation of punishment, the counsel for the prosecution could by no possibility anticipate. When judgment had been allowed to go by default in an indictment for a libel, the calling in question the veracity of the facts stated in the libel, could by no possibility have been anticipated by me. And, therefore, I take it to be matter of course that I should be indulged with an opportunity of answering these affidavits.

Mr. Justice *Le Blanc*.—Your affidavits, I apprehend, are only meant as answers to the affidavits of the defendant, or to part of those affidavits; the rule will not be adhered to if you go into new criminating matter.

Mr. *Garrow*.—My lords, I have no such intention; I should think it would be highly indecent, and shew a great want of that decorum which is due to the Court, to do so. My object is, to take off the effect of these affidavits.—If I were to go into new criminatory matter, I certainly could have no objection that the defendant, if he thought proper, should make new affidavits,—there might then be a rejoinder and rebutter.

Lord *Ellenborough*.—We cannot anticipate whether there will be any impropriety in the answers to these affidavits.—We have not seen them.—When they are offered, we shall do that which justice requires, and the practice of the Court allows.

Mr. *Marryat*.—The prosecutor had very good reason to think that the affidavits of the defendant would contain such facts as they do, since a justification had been put upon the record in the action that was brought by colonel Fullarton against colonel Draper. And the prosecutor knew, also, that witnesses had been examined for the purpose of substantiating it.

Mr. *Garrow*.—My lords, I wish my learned friends would condescend to give us a receipt how an affidavit should be framed on the part of the prosecution.

Lord *Ellenborough*.—Let it stand over till the next term.

[Leave granted.]

COURT OF KING'S-BENCH,

Monday, February 6.

49th Geo. III. A. D. 1809.

Mr. Sergeant *Best*.—I humbly move your

lordships for the judgment of the Court upon colonel Draper for a libel on colonel Fullarton.

Mr. *Garrow*.—I, on the part of the prosecution, am as ready to proceed as the learned sergeant who appears for the defendant; but I must beg leave to observe, that what is to be read in this case, is too long for what remains of the present day.

Mr. Sergeant *Best*.—Colonel Draper was extremely anxious to appear on the first opportunity; at the same time, if on account of the press of other public business, it be inconvenient for the Court to proceed now, I cannot insist upon it.

My lords, we have the affidavits of three gentlemen, sir Samuel Hood, and two others who were not in the country when this case was last before the Court (sir Samuel Hood was then absent in the service of his country), and I hope the Court will have no difficulty in permitting us to file these affidavits.

Lord *Ellenborough*.—You may then go on *ad infinitum*.

Mr. *Garrow*.—My lords, the learned sergeant certainly cannot have been informed of what passed in this cause before.—The leading counsel for the defendant is now absent on account of a domestic calamity.

Mr. *Marryat*.—From what passed on the former occasion, I submit that we are entitled to file new affidavits, in reply to those which have been filed in answer to those which we have already made.

Mr. Sergeant *Best*.—My lords, I had not the good fortune to be here on the former occasion;—I merely requested leave to file the affidavits of sir Samuel Hood and the other two gentlemen. We could not get their affidavits before, because they were absent—sir Samuel Hood was absent in the Baltic.

Mr. *Garrow*.—My lords, I do not oppose this standing over at present, if the Court think it is inconvenient to proceed now.

Lord *Ellenborough*.—I do not know when we shall have an end of it.

Mr. Justice *Le Blanc*.—If we proceed in it now, it will prevent all the other business of the day from going on.

Lord *Ellenborough*.—If you press and insist upon it, your motion must be heard.

Mr. Sergeant *Best*.—If it be inconvenient for the Court to hear it to-day, I shall certainly not press it.

Lord *Ellenborough*.—I am afraid it would be highly inconvenient if we were to proceed in it at present.

Mr. Sergeant *Best*.—Perhaps your lordships wish that it should stand over till next term.

Lord *Ellenborough*.—We will hear what the other side says.

Mr. *Garrow*.—My lords, the learned sergeant has told you that colonel Draper has a great anxiety to come here the very first opportunity, and I may say, with equal truth, that the prosecutrix on the present occasion is equally anxious to proceed. I do not mean to say, that we should press it on this day if the Court does not think it would be convenient; I only wish it to be understood that the prosecutrix has only one object in view in this case, namely, to vindicate the character and honour of her deceased husband.

Mr. Sergeant *Best*.—I am equally anxious on the part of colonel Draper, but leave it entirely to the judgment and discretion of the Court.

Lord *Ellenborough*.—Of course no further affidavits, after to-day, are to be filed.

Mr. Sergeant *Best*.—None have been filed.

Lord *Ellenborough*.—I mean none are to be produced but those that have been already sworn.

Mr. *Gurney*.—My lords, we humbly hope the Court will order all their affidavits to be filed, that we may have the advantage of looking at them beforehand.—The gentlemen on the other side have seen our's for two months past.

Lord *Ellenborough*.—Though it may be inconvenient for the other public business of the Court, I would wish that it should be heard now, rather than that any expectations should be indulged or claims should be made which are unwarranted. I would rather sit here (whatever length of time it may take) to hear it at the present moment:—if that is not pressed, it shall stand over till next term—if it is pressed, I am ready to sit here and attend to it while my strength continues, and till that strength shall be wholly exhausted.

Mr. *Marryat*.—My lords, in a case circumstanced like the present, generally speaking, a defendant is entitled to hear all the affidavits on the part of the prosecution first read.

Mr. *Garrow*.—You are quite mistaken.

Mr. *Marryat*.—I contend I am not mistaken. but that what I am stating is perfectly accurate;—that by the course of proceeding in this Court, when the defendant has suffered judgment to go by default, he is entitled to have all the affidavits on the part of the prosecution read in the first place, and then to exercise his own judgment and discretion what answer he will give to them, and what affidavits he will put in. They have obtained permission to file or produce new affidavits,—that is inverting the order of proceeding. We are in possession of some affi-

davits.—Whether a new case is to be made by the prosecutrix to preclude these affidavits from being read, or to render them immaterial when read, it is impossible for us to know till we see her affidavits; on the former day an affidavit of sir Samuel Hood, which had been made on a different occasion, was offered, and the Court did not think proper to receive it.* He has now returned from the Baltic, and has made a new affidavit, and I ask your lordships whether it is not fair, if the prosecutrix has liberty to file new affidavits, that the defendant should also be at liberty to put in new affidavits, in answer to those on the other side.

Mr. Justice *Le Blanc*.—You say you do not know whether the prosecutrix is now to be permitted to make out a new case;—she cannot file affidavits, except in reply to the particular facts stated in your affidavits.

Lord *Ellenborough*.—On reading the affidavits on the part of colonel Draper, it appeared that some facts were introduced into some of them to which the Court in its justice thought that the prosecutrix should be heard in reply;—but we will not permit her to make a new case, or to do any thing further than to answer some of the facts stated in your affidavits.

Mr. *Garrow*.—My lords, the new affidavits that we have made, are only in reply to those on the part of the defendant.

Mr. Sergeant *Best*.—These new affidavits of our's state no new facts, but are only confirmatory of colonel Draper's own affidavit.

Lord *Ellenborough*.—If they had come here and asked for an indulgence, we might have ordered the affidavits to be filed;—but they ask no indulgence, they are equally ready with colonel Draper to have this business brought before the Court. The number of holidays, and the press of public business, make it inconvenient to the Court to hear this case at the present moment; but rather than that there should be any further cavil about it, I will sit here to any hour, and have it closed.

Mr. Sergeant *Best*.—I am very sorry for it.

Mr. Justice *Le Blanc*.—It is understood that no affidavits are to be read but those that are now sworn.

Lord *Ellenborough*.—If any should be sworn after this time, they cannot be received.

[Postponed till next Term.]

COURT OF KING'S-BENCH,

Tuesday, 25th of April, 1809.

The Defendant appeared at the bar.

Mr. *Garrow*.—I think the Court will be of opinion, that it would be more convenient

* Vide p. 1077.

not to begin this case, unless they could finish it. As colonel Draper is a military man, and upon military duty, we would wish to give him as little trouble as possible.

Mr. Justice *Le Blanc*.—Suppose it stand over till Monday?

[This was agreed to.]

Mr. Justice *Bailey*.—This is not the same publication for which colonel Draper has before received sentence?

Mr. *Garrow*.—The libel in question, my lords, is in the same book. When this cause was formerly before the Court, the affidavits made on the part of colonel Draper were read; we have now affidavits in answer to them. It will be our duty to read them first, and then to make our observations on them.

Mr. Justice *Grose*.—This is not a prosecution for the same part of the publication?

Mr. *Garrow*.—No, my lord; the former was a prosecution by Mr. Sullivan; this is a prosecution for an alleged libel against the late colonel Fullarton, but it is to be found in the same book.

Mr. Justice *Grose*.—I take it this part of the publication was not in the former information?

Mr. *Garrow*.—No, my lord, certainly not; it is quite distinct.

Mr. *Dauncey*.—If your lordships would have the goodness to appoint Wednesday instead of Monday, it would be rather more convenient.

Lord *Ellenborough*.—Very well, let it stand for to-morrow fortnight.

COURT OF KING'S BENCH,

Wednesday, May 10, 1809.

The Defendant appeared at the bar.

Mr. *Garrow*.—Your lordships will recollect the stage in which this cause now is. When it was formerly before the Court, certain affidavits were read on the part of the defendant, and the Court then gave us leave to answer those affidavits, which we shall now proceed to do.

Lord *Ellenborough*.—Read the affidavits on the part of the prosecution.

The affidavit of the honourable Mrs. H. Fullarton was then read as follows:

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, *Esq.*

on the Prosecution of

The hon. M. H. FULLARTON, Widow.

The honorable Marianne Hamilton

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Fullarton, of St. James's-place, and Worton-house, Isleworth, in the county of Middlesex, widow of William Fullarton, late of Fullarton, esq. deceased, maketh oath and saith,—That the defendant having published a book, intituled, "An Address to the British Public," containing various libellous assertions respecting the said William Fullarton, he the said William Fullarton did, as this deponent was informed and believes, cause an action to be brought in this honourable Court, against the said defendant for the same, to which action the said defendant pleaded a justification; and that issue being joined in that cause, the said Edward Alured Draper caused application to be made to the said Court, for a commission to examine witnesses. And she saith, as this deponent hath been informed and believes, that it is not true, as stated by the said defendant in his affidavit filed in this prosecution, that the said William Fullarton, on such motion by his counsel, offered to admit as originals copies of all the various letters, returns and other documents which the said defendant conceived necessary to support the said justification; and, therefore, if the original letters, returns, and other documents were, as is by the said defendant in his affidavit stated, transmitted to the Horse-guards, it was, as this deponent believes, at his request, and not at that of the said William Fullarton.

And this deponent further saith, she hath been informed and believes, that after the said original letters, returns, and other documents, had been brought over as aforesaid, the said William Fullarton was applied to by the said defendant to admit copies thereof in evidence, as if the same were originals, and which the said William Fullarton informed her he declined to do, because the words of the defendant's libel being, that "original documents were transmitted to the adjutant-general's office, Horse-guards," for the purpose of substantiating a charge against the said William Fullarton, he the said William Fullarton conceived, that the documents required by the defendant ought to have been already there, and consequently those brought from Ireland were not material to the subject at issue. But this deponent likewise saith, that, as she is informed and believes, the said William Fullarton, for the purpose of expediting the cause, which he was most anxious to bring to trial, did instruct his counsel to engage, on his behalf, to produce at the trial such persons as the said defendant should require from Scotland, which offer the said defendant declined, as this deponent hath been informed and believes. And

this deponent further saith, that shortly afterwards the said defendant filed a bill in the Court of Exchequer, for commissions to examine witnesses, and for an injunction to restrain proceedings in this honourable Court, until the same should be returned; and that owing to the severe indisposition of the said William Fullarton, who was unable to attend to business, and not from any wish on his part, as this deponent believes, to occasion delay, the said defendant did obtain such an injunction. And this deponent further saith, that although the said commissions were sued out for the purpose of examining witnesses in Ireland and in Scotland, in the month of April or May, 1807, yet the said defendant did not open the same until the month of November following, in which month the said William Fullarton, as this deponent was informed and believes, caused application to be made to the said Court of Exchequer, to dissolve the said injunction, when the said Court was pleased to order the same should stand dissolved, and the said William Fullarton be at liberty to proceed to trial at the sittings after Hilary term then next ensuing, unless the said commissions were returned by a particular day named for that purpose. And this deponent further saith, she hath been informed by the said William Fullarton, and verily believes, that in consequence of such order being so obtained, he the said William Fullarton determined to proceed to trial at the sittings after Hilary term aforesaid, and instructed his attorney accordingly, but which trial was, as this deponent believes, prevented by the application made to the said Court of Exchequer, by direction of the said defendant, as is stated in his affidavit; but this deponent saith, that the said William Fullarton asserted to her that he always considered, and this deponent doth believe, that the said application by the said defendant was made for the purpose of delaying the trial of the said cause.

And this deponent further saith, that the private examination mentioned by the said defendant in his affidavit, before the sheriffs' substitute of Ayr, was, as this deponent was informed and believes, by no means intended by the said William Fullarton, to interfere irregularly in the examination of witnesses, under the said commissions; but she saith that the said William Fullarton, having large claims to settle with government, respecting the 23rd regiment of dragoons, and being desirous to obtain such evidence as would be serviceable to him in preferring and establishing the same, took the opportunity, when in Scotland, in June 1807, where he had gone for the purpose of giving his vote at the general election for

the county of Ayr, to present a petition to the sheriff depute for that county, or to his substitute, agreeable to the forms and practice of the law of Scotland, to pre-cognosce or examine certain persons whose testimony was by the said William Fullarton deemed material for the purpose aforesaid. And the said deponent further saith, that the said defendant having by such proceedings as aforesaid, as this deponent has been informed and verily believes, impeded the progress of the said action for a period of nearly two years, and the suit having become abated by the melancholy event of the decease of this deponent's husband,—she, this deponent, under all the circumstances of the case, did feel it to be her duty to prefer the present indictment. And this deponent further saith, that the said William Fullarton was in his life-time colonel of the late 23rd regiment of light dragoons, from the first raising of the said regiment in 1794, until the same was disbanded in 1802, and that, as she verily believes, the said regiment was raised by the said William Fullarton, without any expense whatever to government, as far as respected the levy of men and horses.

And this deponent farther saith, that she hath heard and verily believes it to be true, that after the said regiment was so raised, the said William Fullarton declined to command the same in person until a question respecting his military rank should be settled, and, therefore, when not engaged in parliamentary duty, solicited and obtained from time to time, leave of absence from his said regiment. And this deponent saith, that except when occasionally called upon to settle regimental business, and remaining until the same was adjusted, he never did take the command of the said 23rd regiment of light dragoons, at any period of time whatever, to this deponent's knowledge or belief. And this deponent farther saith, that the said William Fullarton, excepting short occasional absences, and when he joined his regiment as aforesaid, constantly resided with this deponent, during the whole time he was so colonel of the said regiment of dragoons, by reason whereof this deponent had an opportunity of knowing, and was in the habit of knowing, most of the concerns of business in which the said William Fullarton was engaged, she, this deponent, having frequently copied letters written by the said William Fullarton, on regimental business, and conversed with him upon the same, in so far as he was engaged therein. And this deponent further saith, that in the year 1795, the said regiment of dragoons was placed, as she was informed and believes, on the Irish establishment, and was continued on that es-

establishment until disbanded in the year 1802. And this deponent further saith, that it appears from the general orders hereto annexed, that the right hon. earl Carhampton was appointed commander-in-chief of his majesty's forces in Ireland, on or about the 15th day of October, 1796, and that his lordship continued to hold that office until on or about the 2nd day of December, 1797, when, as appears by the general orders hereto annexed, he was succeeded in that office by sir Ralph Abercrombie. And this deponent further saith, that in the year 1797, Messrs. Corry, Bristow, and Co. of Dublin, army agents, were, as she was informed and believes, agents to the said regiment of dragoons. And this deponent hath heard, and verily believes it to be true, that the said agents had made a complaint to the said earl of Carhampton, respecting the regimental accounts, charging that they the said agents were largely in advance to the said regiment, and that they could not answer the paymaster's drafts for money, unless such accounts were adjusted. And this deponent farther saith, that she hath been informed and verily believes, that the same arose from the then state of the accounts of the said agents, and the sums then due to them from the public, and their inability, from deficiency of capital, to make any further advances. And this deponent further saith, that in such communication made by the said agents to earl Carhampton, from all the information she has been able to collect respecting the same, she verily believes, the name of the said William Fullarton was not implicated in the least, as appears by a letter written in the name of the same agents, and signed, as this deponent believes, by Major Bristow, one of the partners of the firm, to lieutenant-col. Spencer, dated May 6, 1797, in the following words: "That the pay-master not having furnished his accounts, we have not only been under the disagreeable necessity of applying to you to remedy this evil by your immediate orders to him on this point, but we have also been obliged to lay the matter before the commander-in-chief." And this deponent farther saith, that she hath made diligent inquiry of colonel Corry, and of colonel Brown, the two surviving partners of the same firm, for information respecting the above representation made by their house to the said earl of Carhampton, respecting the affairs of the said 23rd regiment, and has been informed by each of them, and which information she believes to be true, that they know nothing of the matter.

And this deponent further saith, that in the month of July, 1797, the said William Fullarton being then in London, at-

tending his duty in parliament, as member for the county of Ayr, received, as she was informed and believes, a letter from the said earl Carhampton, to the following effect:—"Royal Hospital, June 30th, 1797;—Sir, I am sorry I am obliged to signify to you, that the situation of your regiment is such, especially with regard to the accounts, that I am under the necessity of requiring your personal attendance immediately." And this deponent farther saith, that as soon as the said William Fullarton could leave his duty in parliament, after the receipt of the said letter, he, in consequence thereof went to Ireland, and arrived there on the 10th of August, 1797, and returned from thence the 16th of September following; and that this deponent did not accompany her said husband to Ireland, and therefore cannot, from her own knowledge, depose to any of the events that took place respecting the said regiment, from the time the said William Fullarton left England, as aforesaid, and until his return thereto; but this deponent has frequently heard the same detailed by her said husband, and his agent Mr. Alexander Walker, now deceased, who accompanied him to Ireland. And this deponent hath heard, and verily believes it to be true, that the said William Fullarton arrived in Dublin on the 10th day of August, 1797, and waited immediately on earl Carhampton, and was received by him with polite attention. And the said William Fullarton, as this deponent believes, afterwards proceeded to investigate the accounts of the said regiment of Dragoons with the said agents, and upon such investigation ascertained and established, as she has heard and verily believes, that the said agents were not in advance to the said regiment, as had been by them represented in manner aforesaid, and were indebted to the said William Fullarton, as colonel thereof, on his own private account; but that government was largely indebted to the agents on the regimental accounts, and to the said William Fullarton on the recruiting accounts for the said regiment.

And this deponent further saith, that she hath heard, and verily believes, that the said William Fullarton did present, or caused to be presented, some time in the said month of August, to earl Carhampton, a memorial or statement, bearing date the 21st day of the same month, respecting the accounts of the said regiment of dragoons with the said agents, whereby it clearly appeared, that a balance was due from the said agents, when they made the aforesaid complaint to the said earl Carhampton. And this deponent further saith, that until she perused

the affidavit made in this prosecution by the said earl Carhampton, she, this deponent, never knew or heard of any complaint having been made, and she verily believes none such ever was made by or to the said earl respecting the subsistence money of the men of the said regiment having been drawn by the said William Fullarton, and applied towards discharging debts due from him for other purposes.

But this deponent saith, that she hath heard, and believes it to be true, that John Jameson, esq. the paymaster of the said regiment of dragoons, and lieutenant Bradshaw, who acted for him in his absence, whilst the said William Fullarton was in England, and without his privity or knowledge, by the express orders of lieutenant-colonel Spencer, who then commanded the said regiment in the absence of the said William Fullarton, paid several sums of money, amounting to about 1,800*l*, or thereabouts, for sadlery and appointments furnished to the said regiment of dragoons before the off-reckoning warrants, out of which the same ought to have been paid, were issued; and that complaint thereof having been made by the agents to the said earl Carhampton, as this deponent was informed and believes, the said earl threatened the said captain Jameson, that he would put him under arrest, and also ordered lieutenant-colonel Spencer, or captain Jameson, to refund the said money; but it appearing, as this deponent has been informed, and verily believes, that on investigating the regimental accounts with the said Messrs. Corry, Bristow, and Co. in manner hereinbefore set forth, that government, and the said agents were indebted to the said William Fullarton, and to the said regiment, in a sum of money beyond the amount of the money so paid for sadlery and appointments, the said matter was arranged by the said William Fullarton, with the said agents, to prevent any inconvenience being sustained by the said lieutenant colonel Spencer, captain Jameson, or lieutenant Bradshaw, from such incautious and irregular payments. And this deponent hath heard and believes, that the said earl Carhampton was fully satisfied with such explanation and arrangement, and he never made any further remonstrance to any of the said parties on this subject, to this deponent's knowledge or belief. And this deponent further saith, that so far from the said William Fullarton having sanctioned such irregular payments, and being charged at that time with having so done, the said payments were, as this deponent was informed, and verily believes, ordered by lieutenant-colonel Spencer, of his own authority, without any

knowledge or participation of the said William Fullarton whatever, the said lieutenant-colonel Spencer having, in answer to a letter from the said William Fullarton to him on the subject, admitted himself by letter bearing date the 11th of July, 1797, to be the person who had sanctioned the same, as he therein writes as follows:—"With respect to the money that may have been paid for appointments, I ought to consider myself in a great measure responsible."

And this deponent further saith, that she hath heard, and verily believes it to be true, that after the said William Fullarton had investigated and arranged the regimental accounts with the agents as above-mentioned, he, the said William Fullarton, went to Dromilly, the then head-quarters of the said regiment of light dragoons, and arrived there at the latter end of the month of August, and upon that occasion did, as this deponent hath been informed and believes, sign the monthly return, dated September 1, 1797, referred to by the defendant in his affidavit. And this deponent saith, she hath heard, and verily believes it to be true, that such return was the only return of that regiment ever signed by the said William Fullarton, and was so signed by him, in compliance with military etiquette, at the particular request of lieutenant-colonel Spencer, who declined to sign the same during the presence of the said colonel, although desired to do so by the said William Fullarton, but that the same return had previously been made up under the inspection of lieutenant colonel Spencer, and before the arrival of the said William Fullarton at head-quarters, and as this deponent hath been informed and believes, without any communication whatever with him respecting the same. And this deponent saith, that she hath minutely examined the copy of the return annexed to the affidavit of Mr. Charles Few, filed in this cause, with the regimental book of returns, and hath discovered a variation between them, the regimental book, in the detail written on the back of the said return, stating, in addition to the number of men and horses at different quarters, as stated in the copy of the return annexed to the affidavit of the said Charles Few, under the column of men, that there were at Castlebar 7, Scotland 1, and absent on leave from general Johnson 1, making together 9 men; and under the column of horses, that there were at Castlebar 9, and Scotland 14, making 23 horses, and which made the number of men in the detail to agree with the body of the return, making together 364 men, and making the number of horses 349, be-

ing 4 horses less than is mentioned in the body of the return. And this deponent saith, that the N. B. stated in the copy of the said return annexed to the affidavit of the said Charles Few, does not appear in the copy thereof in the said regimental return book, and therefore this deponent believes, that such N. B. did not form part of the return then signed by the said William Fullarton.

And this deponent further saith, she hath heard, and verily believes it to be true, that the said William Fullarton, in a very few days after the 1st day of September, 1797, returned from Dromilly to Dublin, where he finished all his regimental arrangements, and, as this deponent verily believes, to the satisfaction of the said earl Carhampton; because, she saith, that there being a sum of money due from government to the said William Fullarton, for the purchase of nine horses, the said earl Carhampton gave, as she has heard and believes, and as appears by the regimental book of the said regiment, an order for application to be made to the treasury of Ireland, for payment thereof to the said William Fullarton, which money the said William Fullarton received. And this deponent further saith, that she hath reason to believe, and doth verily believe, that the said earl Carhampton was at that time satisfied with the explanation that was made respecting the accounts of the said regiment of dragoons with the said agents, because she saith, that she hath discovered, in a memorandum book kept by the said William Fullarton, for the year 1797, in which he was in the habit of making entries of daily occurrences, the following entry: "14th September, received letter from col. Handfield, stating, that lord Carhampton declined granting me leave of absence, till 23rd dragoon accounts were all adjusted. Same day saw lord Carhampton, showed him certificate from agents that the accounts were all delivered and satisfactory, and obtained his leave to go to England." And this deponent saith, that the said entry is in the hand-writing of the said William Fullarton, and made in a memorandum book along with other memorandums of the same date. And this deponent verily believes the same was so made and entered the day, or within a day or two after, the same bears date.

And this deponent further saith, that the letter from colonel Handfield, above alluded to, is dated 13th of September, 1797, and is to the effect following: "Colonel Handfield presents his compliments to colonel Fullarton, and has the honour to acquaint him, by direction of the commander in chief, that his lord-

ship is under the necessity of declining to lay before his excellency the lord lieutenant, colonel Fullarton's memorial for leave of absence, until the accounts of the 23rd light dragoons shall be properly adjusted. Royal Hospital, 13th of September." And that the certificate also above mentioned is as follows:—

"We hereby certify, that we have received the pay-master's accounts of the 23rd light dragoons, up to the 31st of March, 1797, and the English and Irish recruiting accounts, up to the 31st of August, 1797, including (as far as we can judge at present) every necessary document that ought to be furnished by the regiment. (Signed) E. Corry, Bristow, and Co. Hollis-street, 14th September, 1797." And this deponent further saith, as she has heard and believes, that on the 15th day of September, 1797, leave of absence was granted to the said William Fullarton, which was regularly notified to the said regiment, by direction of the adjutant-general, as also to the said William Fullarton by general Craddock, on the 16th of September, who informed him he might sail for England immediately. And this deponent further saith, that she hath heard and verily believes it to be true, that a letter was sent by order of the said earl of Carhampton, to John Shaw Maxwell, esq. now sir John Shaw Heron Maxwell, bart. the major of the said regiment, at Spring-Kell, near Dumfries (and not to William Maxwell, esq. who was only a captain in the said regiment), as is erroneously deposed by the said earl Carhampton in his affidavit filed in this prosecution, ordering over all recruits, recruiting parties, and horses,—that in consequence of such order, the said major Maxwell joined the said regiment with thirty-one men and fifty-one horses, and not with sixty horses, as is stated by both the said earl Carhampton and the said defendant, in their affidavits filed in this cause, nine horses being purchased by the said William Fullarton, when in Dublin, in August, 1797, of one — Giles, and for the cost of which the said William Fullarton so received an order on the treasury, by direction of the said earl Carhampton, as aforesaid. And that the said Major Maxwell left behind him, in Scotland, several horses, when he joined the regiment by order of earl Carhampton, as aforesaid. And that the cause for their being so left was, they were sick, lame, and in bad condition, and consequently unable to march with the rest, as this deponent hath heard and believes.

And this deponent further saith, that the said horses so left behind by the said major Maxwell, were, as this deponent

hath heard and believes, left under the care of Mr. Alexander Bruce, by reason that one recruit only belonging to the said regiment was, in consequence of the urgent orders from the said earl Carhampton, suffered to remain with them; the said Alexander Bruce having taken charge of the said horses, in consequence of general orders received from the said William Fullarton to assist the recruiting parties of the said regiment, and not from any particular directions respecting the said horses. And this deponent hath further heard and verily believes, that the said horses were foraged under the direction of the said Alexander Bruce, which the said defendant either does know, or might have known, he having taken evidence, as this deponent hath been informed, to this point, under the commission issued from the said court of exchequer, as stated in his affidavit. And this deponent further saith, that in consequence of the said correspondence between lieut.-col. Handfield and lieut.-col. Spencer, as detailed in the affidavit of the defendant, and of the directions transmitted by col. Handfield to lieut.-col. Spencer, that a specific return should be made out of the particulars of these horses, the said William Fullarton immediately addressed the said Alexander Bruce, and desired him, as no officer belonging to the said regiment had been left in Ayrshire, to make out such a return in the most specific terms, and which said Alexander Bruce, as this deponent hath heard and believes, did accordingly. And this deponent saith, that she believes a specific return of such horses, with every particular, as required by the said earl Carhampton, was forwarded to lieut.-col. Spencer, to be by him transmitted to the commander in chief. And this deponent further saith, that the expense of foraging the said horses, so left behind in Scotland, by the said major Maxwell, was, as she has been informed and believes, borne by the said William Fullarton, the same being advanced in the first instance by the said Mr. Alexander Walker, since deceased, agent of the said William Fullarton, who charged the said William Fullarton therewith. And this deponent further saith, that upon a most minute investigation made by her to ascertain whether the said forage money hath been repaid, or in any shape whatever allowed or made good to the said William Fullarton, she hath not been able to discover, upon repeated and accurate searches among the papers and accounts of the said William Fullarton, any memorandum, entry, or other voucher whatever respecting the payment thereof, and therefore this deponent doth not believe that the said

William Fullarton ever was repaid these advances. And this deponent further saith, that she hath applied to Nugent Kirkland, esquire, who was paymaster of the said regiment, on the 16th of July, 1798, when the paper writing, or receipt for 300*l.* 15*s.* 7½*d.* referred to in the defendant's affidavit purports to bear date, and who continued in that capacity until the said regiment was disbanded, for information respecting the same. And the said Nugent Kirkland hath repeatedly declared to her, that the said William Fullarton hath not been paid the said forage money, or any part thereof, by him the said Nugent Kirkland, nor hath the said Nugent Kirkland in any shape whatever, allowed the same to the said William Fullarton. And this deponent further saith, that the said Nugent Kirkland, in answer to this deponent's inquiries, saith, he cannot give any account how the said receipt became deposited in the quarter-master general's office, but this deponent is certain that the said William Fullarton never saw the said receipt, nor ever knew of the same until a copy of such receipt was shown him by Mr. Pasmore, this deponent's solicitor, about the 7th of February, 1808, when the said William Fullarton was much astonished thereat, and stated that it must be a forgery, and afterwards used all possible exertions on his part to discover the author thereof, and by what means the said receipt was deposited in the quarter-master general's office.

And this deponent further saith, that no such conversation took place between the said William Fullarton and Richard Oswald, esq. of Auchin-Criue, in the presence of this deponent, as is stated by the said defendant in his affidavit, nor at any other time whatever, as this deponent verily believes.

And this deponent further saith, that she has been informed, and verily believes, that in the year 1802, the government of Ireland was in arrear to the said William Fullarton in upwards of 20,000*l.*, on the off-reckoning account, for two years current from the 7th of February, 1800, to the 7th of February, 1802, and from the period current, from the 7th of February, 1802; and also for allowance of 15 per cent thereon, which allowance hath not yet been paid. And that in consequence of such delay on the part of government, certain of the regimental furnishers had not been paid their demands within the usual period of time. And this deponent believes, that on or about the time mentioned in the defendant's affidavit, filed by him in this cause, petitions were transmitted from Michael Morris, of Tuam, who had furnished the said regiment of dragoons

with boots, and from William Spencer, of Belfast, who had furnished the same with sadlery, unto his royal highness the duke of York, complaining of the delay that had taken place in paying their demands, and that thereupon his royal highness did, as this deponent believes, make the communication to the right hon. lord Hobart, as stated in the said defendant's affidavit. And this deponent further saith, that a copy of such communication was transmitted to the said William Fullarton by the right hon. John Sullivan, directing the said William Fullarton to furnish him, for lord Hobart's information, with such an explanation as might enable his lordship to form a judgment thereon. And this deponent further saith, that his royal highness the duke of York also addressed a letter to the said William Fullarton, dated Horse-Guards, 15th of June, 1802, and as follows;—"Sir, the commander of the forces in Ireland having submitted for my information, petitions from William Spencer, of Belfast, and Michael Morris, of Tuam, respecting their demands against you, for articles of clothing and appointments furnished the 23rd light dragoons to a considerable amount, I directed that the same should be referred to the secretary at war, for his opinion, which having been communicated in letters of the 12th and 14th instant, from the deputy secretary at war, suggesting the expediency of transmitting the papers in question to you, for your immediate report upon the subject of them; you will herewith receive the memorials above mentioned, accompanied with letters from colonel Beckwith and those of Mr. Lewis."

And this deponent further saith, that she hath heard, and verily believes it to be true, that in consequence of such communications so made to the said William Fullarton, from his royal highness as aforesaid, he, the said William Fullarton, transmitted to his royal highness a memorial or letter, explaining that the circumstances of the delay on the part of government, in issuing the off-reckoning warrants and allowance, was the cause of the non-payment of the furnishers as before stated, and also stating as follows,—“Whenever the amount due by government to the 23rd dragoons shall be issued, or official assurances granted that it will be paid, colonel Fullarton will be ready to satisfy every regimental demand.”—And this deponent further saith, that she verily believes that such statement and memorial so presented to his royal highness the duke of York, proved perfectly satisfactory, because, she saith, that on the 20th of June, 1802, major-general Brownrigg,

then the military secretary to his royal highness, addressed a letter to the said William Fullarton, wherein, after acknowledging the receipt of the said memorial or letter, he states, “I have it in command to acquaint you, that your said letter will be transmitted to the secretary at war and to the commander of the forces in Ireland, to which department his royal highness refers you for any further explanation you may have to make on the same subject,—they expressing themselves satisfied, is all the commander in chief desires.”

And this deponent saith, that she hath heard, and verily believes it to be true, that on the 1st of July, 1802, the deputy-secretary at war addressed a letter on the subject of the above claims to major-general Brownrigg, containing, amongst other observations, the following words,—“As colonel Fullarton appears to be confident that an official assurance of the interference of government to grant the before-mentioned allowance, with the actual issue of the off-reckonings due upon his last assignment, the necessity of which issue is obvious, will enable him to make an early arrangement for the satisfaction of the tradesmen's demands, Mr. Yorke apprehends that the business in its present stage may be referred back to Ireland, for the better consideration of his excellency the lord-lieutenant.” And this deponent further saith, that shortly afterwards the off-reckoning warrants were issued by the Irish government to the said William Fullarton, and he was permitted to proceed on the public service alluded to in his royal highness's letter stated in the defendant's affidavit, which was to take upon himself the government of Trinidad, jointly with Thomas Picton, esq. and sir Samuel Hood without any further delay. And this deponent further saith, that she verily believes that the said defendant knew, or might have known, that the explanation so given by the said William Fullarton had proved satisfactory, as the said defendant had, as this deponent hath heard and believes, free access permitted him to the different offices connected with the army, for the purpose of defending himself in the action commenced against him by the said William Fullarton, as mentioned in his the said defendant's affidavit.

And this deponent further saith, that so anxious was the said William Fullarton to discharge the claims of the said Michael Morris and William Spencer, that as this deponent hath been informed and believes, he actually discounted the said warrants at a loss to himself of 2½ per cent commission, besides 5 per cent interest, until the said warrants were in cash, with a mercantile house in

the city of London for the purpose of discharging the same; and they were actually discharged long before the money was paid by government, and which the said defendant did know, or might have known at the time that he made his affidavit in this cause, the said Michael Morris having deposed to the interrogatories exhibited to him by virtue of the commission issued from the court of exchequer, for the examination of witnesses in Ireland on the defendant's behalf, as stated in the said defendant's affidavit, as follows:—"That when he presented his petition to the commander-in-chief, as aforesaid, the said William Fullarton had not received from government the means to discharge the same." And this deponent further saith, that she hath been frequently informed by the said William Fullarton, and fully believes the same to be true, that what the said defendant hath stated in pages 52 and 53 of the publication for which the said defendant is indicted, and also deposed to in his affidavit filed in this cause, respecting an address made by sir Samuel Hood to the said Wm. Fullarton, in the council of the island of Trinidad, is not true, the said sir Samuel Hood not having addressed the said William Fullarton to the effect therein stated. And this deponent further saith, that the said William Fullarton, to the knowledge or belief of this deponent, never printed or published, or caused to be printed or published, any matter or thing respecting the conduct of the said defendant, until the letter from the defendant mentioned by him in his affidavit, addressed to the said Thomas Picton, had been published; and she saith, that in the publication by the said William Fullarton, mentioned in the affidavit of the said defendant, in that behalf, he the said William Fullarton did, immediately after the passages set forth by the said defendant in his affidavit, conclude in the words, or to the effect following. "but it seems he stands in the predicament of a witness for colonel Picton, and against me; under these circumstances any personal extremities on my part are inadmissible."

And this deponent further saith, she hath been informed by Mr. Pedro Vargas, deceased, and verily believes it to be true, that he having recollected that a copy of the baptismal register of Luisa Calderon might be wanted in England, went of his own accord, after the said William Fullarton had left the island of Trinidad, to the catholic curate of the parish wherein the said Luisa Calderon was born, for a copy thereof, and thereupon voluntarily and readily obtained such copy from the said curate, without paying any money for the same, which this deponent verily

believes to be true, because the said Pedro Vargas had, a short time previous to his decease, made an affidavit in this honourable court, in this prosecution, to that effect. And this deponent further saith, that the action commenced by Juan Montes against the said defendant, as mentioned in the said defendant's affidavit, was brought without the knowledge or interference of the said William Fullarton, as this deponent understands and verily believes. And this deponent further saith, that by the certificate from the auditor-general's office in Ireland, mentioned by the said defendant in his affidavit, there does appear to be a charge of upwards of 2,000*l.* in forage accounts, from July 1800 to December 1802, against the said regiment remaining due, but this deponent saith, that the accounts of the said regiment, for the latter period are not yet audited, and that she, this deponent, is given to understand, by Mr. Vesey, the agent of said regiment, that there is a supplemental account of money due to the said regiment, and which was not ready when the former account was sent in, owing to some memorials not having been answered by government, and which still remain unanswered, although the said Mr. Vesey hath repeatedly applied to the War-office about them, as this deponent hath been informed and believes; and that until such supplementary account be sent in, there cannot be a final settlement of the accounts of the said regiment, but that this is a matter to be settled in the first instance, by the agent of the said regiment.

And this deponent further saith, that she hath been informed by the said William Fullarton, and verily believes the same to be true, that no such long private conference as the said defendant mentions in his affidavit to have taken place between the said William Fullarton and general Grinfield, prior to the said William Fullarton's arrival in Trinidad, did in fact take place, because the said William Fullarton always assured this deponent, and which this deponent believes to be true, that he the said William Fullarton did not at that time know any thing of the government of the said Thomas Picton, and therefore could not have made any observations on the conduct of that governor, of whose measures and proceedings the said William Fullarton knew nothing.

And this deponent further saith, that the only reason given by the said general Grinfield to the said William Fullarton, for leaving Government-house, occupied by the said William Fullarton as first commissioner at Trinidad, was, because the said house was not sufficiently large to

accommodate the said general Grinfield and his staff, and therefore this deponent doth not believe that the motive assigned by the said defendant in his affidavit, to the said general Grinfield for quitting the same, is as stated by him in such affidavit, because the said general Grinfield was, as this deponent well knows, in the habit of frequently dining and passing his evenings at the house of the said William Fullarton, during his stay in Trinidad.

(Signed) M. H. FULLARTON.

Sworn in Court, this 6th of February, 1809.

By the Court.

When that part of the affidavit was read which describes what passed in Ireland, and which Mrs. Fullarton could only state from hearsay, and documents which substantiated her statement,

Mr. Justice *Le Blanc*.—These accounts are totally unnecessary to be inserted in the affidavit.

Mr. *Garrow*.—My lords, we read these affidavits under very serious disadvantages. They come at such a distance of time (not less than six months) from those to which they are an answer, that it is difficult for us, who are of counsel for this lady, to refresh our recollections, so as to see the application of every particular in them. They furnish answers to the libels contained in colonel Draper's affidavits, and to his charges against the late colonel Fullarton, with respect to the 23rd regiment of dragoons, of which he was colonel; and which charges are founded on alleged complaints from the commander-in-chief in Ireland to the commander-in-chief here. This affidavit of Mrs. Fullarton will be found to be in a great measure an answer to them.

Mr. Justice *Le Blanc*.—The affidavit contains what is inadmissible, because it is an account of that which the person making the affidavit has received from others.

When Mr. *Dealtry*, in reading this affidavit, came to that part which denied any such conversation as stated, between Mr. Oswald and colonel Fullarton, respecting the horses of his carriage,

Mr. *Garrow*.—It had been mentioned in the defendant's affidavit, that in a conversation between colonel Fullarton and Mr. Oswald, it had been stated by the colonel himself, that the leaders of his carriage were government horses, and paid for by government. Now Mrs. Fullarton, in her affidavit, says no such conversation ever took place between colonel Fullarton and Mr. Oswald. It was stated to have passed in her presence, and the word *believe* only applies to the last part of the sentence.

Mr. Justice *Bayley*.—"As she believes," rides over the whole.

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When Mr. *Dealtry* came to that part of the affidavit, which stated that an explanation was required of colonel Fullarton, respecting some claims for articles furnished to his regiment, that such explanation was given, that it was perfectly satisfactory, and which circumstance was, or might have been known to the defendant,

Mr. *Garrow*.—I, for one, confess that some parts of this affidavit are not strictly evidence, but one or two observations will supersede the necessity of all the rest. A complaint had been made by the Irish furnishers for boots and saddlery, stating they had not been paid their demands; this complaint was addressed by them to his royal highness the duke of York, when colonel Fullarton had been entrusted with a very important command, or, speaking more properly, had been appointed to the government of Trinidad. The subject of complaint was transmitted to the secretary of state, the present earl of Buckinghamshire, and by him forwarded to colonel Fullarton, by whom a satisfactory explanation was given in return. I have an affidavit from lord Buckinghamshire, stating, that a satisfactory explanation was given by colonel Fullarton, previous to his going out to his government of Trinidad; and all of which was within the knowledge of the gentleman who now stands on the floor.

Lord *Ellenborough*.—Those who are concerned for Mrs. Fullarton, should not have permitted things to be laid before us, which are not relevant. At the same time, I admit that it is difficult, where people have feelings, and very honourable feelings, to avoid it.

Mr. *Nolan*.—This lady thought it necessary to state these things.

Mr. *Sergeant Best*.—We shall see of what value this lady's thoughts are, when they come to be contrasted with the facts.

Mr. *Garrow*.—When the lady's thoughts come to be contrasted with the facts, they will be found to be correct.

The other affidavits on the part of the prosecution were read as follows:

IN THE KING'S-BENCH.

The King versus Draper.

Affidavit of John Murdock, esq.

John Murdock, of the town of Ayr, in North Britain, esquire, maketh oath and saith, he was at the time of presenting the petition herein after set forth, and still is sheriff substitute of the county of Ayr. And this deponent further saith, that in the month of June, 1807, William Fullarton, esq. late of Fullarton, deceased, having come to Ayr, to attend the election of a member of parliament for that shire, did present to this depo-

ment, then being sheriff substitute of the said county, the following petition:—

“To the honourable his majesty's sheriff depute of the county of Ayr, or his substitute,—The Petition of William Fullarton, of Fullarton, colonel of his majesty's late 23rd regiment of dragoons, humbly sheweth,

“That your petitioner finds it necessary to substantiate certain facts and circumstances material to the character of that corps, and relative to the management of the same while under his command, in order that certain information respecting it may be transmitted to his royal highness the duke of York, commander in chief; that there are certain people in the county of Ayr whose evidence will be of importance as being well acquainted and connected with the corps, while quartered in Ayrshire, and your petitioner is desirous that their declarations may be emitted, under your lordship's authority, for which purpose the present application is made for having them precognosced upon these points wished to be established. May it therefore please your lordship to grant warrant to your petitioner to summon the persons whose names are contained in the mandate herewith produced, with any others your petitioner may choose to adduce, to appear before your lordship, at Ayr, upon the 24th day of June current, in order that they may be precognosced relative to the facts and circumstances which your petitioner wishes to substantiate, and their declarations taken down under your lordship's authority, and thereafter the petitioner furnished with the precognition, or a duplicate of the same, for the purpose of communicating the information obtained therefrom to the commander in chief, and your petitioner shall ever pray.”

And this deponent further saith, that no other purpose or view was intimated to him as the cause for the said William Fullarton presenting the said petition, than what is set forth therein, nor was there, to the best of this deponent's recollection or belief, the most distant allusion made to any question depending between the petitioner and the said Edward Alured Draper, before the Court of Exchequer, or to any commission issued therefrom for the examination of witnesses. And this deponent further saith, that the mode of proceeding by petition to precognosce witnesses, appeared to him, this deponent, to be perfectly legal and proper, as conformable to the practice and law of Scotland. And this deponent cannot suppose that such proceeding could be deemed an undue interference with the authority of a court in England, from which a com-

mission had issued on a question between parties to whom, on their action, no reference whatsoever is made in that petition.

And this deponent further saith, that the declarations of various persons were taken before him, in pursuance of such petition, but that the same were not taken on oath, and consequently different to the practice of examining witnesses under a commission issuing from the Courts in England.

JOHN MURDOCK.

Sworn at Ayr, the 28th of January, 1809, before me, one of the magistrates of Ayr, and one of his majesty's justices of the peace for the county of Ayr.

JAMES DONALDSON.

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, Esq.

Affidavit of Thomas Bradshaw, Esq.

Thomas Bradshaw, of Newark upon Trent, in the county of Nottingham, esquire, late captain in the late 23rd regiment of light dragoons, maketh oath and saith, that he this deponent was, in the year 1797, lieutenant and adjutant of the late 23rd regiment of light dragoons, then on service in Ireland, whereof William Fullarton, esq. now deceased, was colonel. And this deponent further saith, that in the same year he this deponent acted as paymaster of the said regiment, during the absence of John Jameson, esq. the paymaster thereof, from head-quarters. And this deponent further saith, that whilst he this deponent was so acting as paymaster of the said regiment, he did, by the express order of lieut.-col. Spencer, who commanded the same, pay the sum of 341*l.* 5*s.* for sadlery and appointments furnished to the said regiment, and which payment was made during the absence of the said William Fullarton from the said regiment, and without his privity, concurrence, or knowledge. And this deponent further saith, that he hath heard and verily believes, that earl Carhampton, the then commander in chief of his majesty's forces in Ireland, having been complained to by Messrs. Corry and Co. the then agents of the said regiment, against the paymaster, captain Jameson, was very angry with the said paymaster.—But this deponent doth not believe it to be true, never having heard the same, that the said earl Carhampton caused the subsistence money due to the troops to be paid out

of any other fund than the fund usually appointed for payment thereof. And this deponent further saith, that the said William Fullarton arrived in Dublin, from England, in August 1797, for the purpose, as this deponent believes, of ascertaining and adjusting the accounts of the said regiment with the said agents, and that afterwards he the said William Fullarton, went to Dromilly, the head-quarters of the said regiment, and arrived there on or about the last day of August, or first of September, 1797. And this deponent further saith, that he this deponent, as adjutant of the said regiment, had previous to the arrival of the said William Fullarton at head-quarters, made up the monthly return for August, and which bears date the 1st of September, 1797, in the usual manner, for the signature of lieutenant-colonel Spencer, leaving the same open in expectation of the arrival of the said William Fullarton, before the return was transmitted to Dublin, and the said William Fullarton having arrived just before the return was put into the Post-office, he was returned present, and consequently signed the same; but that the said William Fullarton did not interfere, directly nor indirectly, in making up the said return. And this deponent further saith, that during the time that this deponent held the situation of adjutant in the said regiment, he this deponent doth not recollect, nor doth he believe that the said William Fullarton ever signed any return of the said regiment, save and except the one above mentioned.

THOMAS BRADSHAW.

Sworn at Newark upon Trent
aforesaid, this 21st day of
January, 1809, before me,

W. BLAND, a Commissioner, &c.

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, Esq.

Affidavit of John Jameson, Esq.

John Jameson, of Drumore, in North-Britain, esq. maketh oath and saith, that he this deponent was, in the year 1797, captain and paymaster of the late 23rd regiment of light dragoons, then on service in Ireland, whereof William Fullarton, esq. now deceased, was colonel, having in the year 1795 succeeded captain Macdonald as paymaster thereof. And this deponent further saith, that in the year 1797, he this deponent, as paymaster aforesaid, received directions from lieutenant-colonel Spencer, who commanded the said regiment in the absence of the said

William Fullarton, to pay certain accounts for sadlery and appointments furnished the said regiment of light dragoons, and which this deponent, in pursuance of such directions did accordingly pay; and this deponent hath heard and verily believes it to be true, that Thomas Bradshaw, esq. the adjutant of the said regiment, had, during the absence of this deponent from head-quarters, by directions of the said lieutenant-colonel Spencer, also paid a sum of money for sadlery and appointments furnished for the said regiment. And this deponent further saith, that Messrs. Corry, Bristow, and Co. the then agents of the said regiment, having made a complaint to the right hon. the earl of Carhampton, then commander-in-chief of his majesty's forces in Ireland, complaining of such payments, and stating that they were so much in advance for the said regiment that they should be under the necessity of stopping any further supplies for the same, he this deponent was ordered to attend the said earl of Carhampton, and in consequence of such orders, he this deponent did attend the said earl, when his lordship expressed high displeasure at this deponent, and threatened to put him under arrest for having, as his lordship stated, made use of the subsistence of the regiment in paying the said accounts for sadlery and appointments, which ought to have been paid out of the off-reckoning or colonel's fund; whereupon he this deponent exculpated himself by stating, as the truth was, that the said accounts and appointments had been paid by the express orders of lieutenant-colonel Spencer. And this deponent further saith, that the said earl did not, when he this deponent so waited upon the said earl, as aforesaid, nor at any other time, to the knowledge or belief of him this deponent, make any complaint or charge against the said William Fullarton, but did distinctly charge this deponent as the person to blame. And this deponent further saith, that he hath heard, and verily believes it to be true, that the said agents, in a letter written by them to lieutenant-colonel Spencer, stated it to be the orders of the said earl of Carhampton, that either he this deponent, or the said lieutenant-colonel Spencer should forthwith refund the sum of money so paid on account of sadlery and appointments. And this deponent further saith, that he never heard, in so far as he recollects, nor doth he believe it to be true, that the said earl of Carhampton caused the subsistence money due to the troops of the said regiment to be paid out of any other funds than the fund usually appointed for payment thereof. And this deponent further saith, that the said sums of money, so as aforesaid paid by him this

deponent and the said Thomas Bradshaw, for sadlery and appointments, were so paid by the express orders of lieutenant-colonel Spencer, and whilst the said William Fullarton was absent from his regiment, in England, and without his knowledge, direction, or concurrence, in so far as this deponent knoweth; and therefore this deponent humbly conceives that no blame could possibly attach to the said William Fullarton therefrom, who was, as this deponent believes, wholly ignorant of the transaction in question; nor did the said William Fullarton, at any time, or on any occasion whatever, interfere with the regimental funds, or draw subsistence money for any purpose or upon any account in so far as this deponent recollects. And this deponent further saith, that he perfectly well recollects that the said William Fullarton arrived in Dublin some time in the month of August, 1797, in consequence of orders received from earl Carhampton, and thereupon preferred and laid before his lordship a statement of the accounts of the said regiment, by which it appeared that the said agents had been in an error when they stated themselves to be so much in advance to the said regiment. And this deponent further saith, that he verily believes that such statement proved completely satisfactory to the said earl Carhampton, as this deponent never afterwards heard from his lordship or from any other person any thing further respecting said complaint. And this deponent further saith, that in every transaction relative to the said regiment, wherein this deponent was concerned or had opportunities of knowing, which were many, he this deponent invariably considered the said William Fullarton's conduct as most honourable, liberal, and disinterested.

JOHN JAMESON.

Sworn before me, at Edinburgh,
this 24th day of Jan. 1809,

WILLIAM COULTER, Provost.

To all whom it may concern, I the right hon. William Coulter, lord provost and chief magistrate of the city of Edinburgh, do hereby certify and attest, that upon the day of the date hereof personally came and appeared before me, John Jameson, the deponent designed, and who subscribed the foregoing affidavit, being a person well-known and worthy of good credit, and deposed that the several matters, facts, and things contained in the said affidavit are truth. In faith and testimony whereof, I have subscribed these presents, and caused the seal of the said city to be hereunto affixed, at

Edinburgh, this 24th day of Jan. 1809.

WILLIAM COULTER, Lord Provost
and Chief Magistrate of the
City of Edinburgh.

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, Esq.

Affidavit of Nugent Kirkland, Esq.

Nugent Kirkland, of Bennet-street, St. James's, in the parish of St. George, Hanover-square, in the county of Middlesex, esquire, maketh oath and saith, that in the month of July 1798, he, this deponent, was pay-master of the late 23rd regiment of light dragoons, whereof Wm. Fullarton, late of Fullarton, esq. deceased, was colonel, he this deponent having not long before succeeded capt. Jameson, as pay-master thereof; and that he this deponent continued as such pay-master, until the regiment was reduced in 1802. And this deponent further saith, that he hath read that part of said defendant's affidavit filed in this cause, which states that he the defendant had discovered among the vouchers passed and allowed for forage, a voucher of which the following is a copy, that is to say, "Received from the pay-master of the 23rd dragoons, the sum of 300*l.* 15*s.* 7½*d.* in full for horses at forage by colonel Fullarton, in Scotland.—Ayr, 16th July, 1798, John Bruce." And this deponent further saith, that he verily believes that the said William Fullarton never saw the said receipt or voucher, nor did he ever know that the same was in existence until the same was discovered and produced by the said defendant, because this deponent saith, that only a few days before the decease of the said William Fullarton, he sent for this deponent, and showed him a copy thereof, and applied to this deponent for an explanation thereof, and stated to this deponent his conviction that the same must have been forged, or words to that effect; and he, the said William Fullarton, particularly and most anxiously requested, that this deponent would ascertain and explain the circumstances relating to the same, as far as was in his power, and by what means it had been deposited in the office where it had been found, but which this deponent, at so great a distance of time was and is unable to do, not having any recollection whatever of the said receipt, nor any reason to believe that any voucher that passed through his hands, if the said receipt did pass through his hands, was a forgery. And this deponent further saith, that the said William Fullarton was not with his regiment at the time the said receipt or voucher bears date, nor did he the said William Fullarton, or

any agent of his, send to this deponent, to the best of his recollection and belief, any voucher or paper writing relating to forage for the horses for the foraging of which the said voucher purports to be a receipt. And this deponent further saith, that with respect to that part of the affidavit of the defendant, which states that he the defendant verily believes that the said sum of money had been allowed to the said William Fullarton, this deponent in answer thereto maketh oath and saith, that to the best of this deponent's knowledge and belief, the said William Fullarton hath not, nor hath any agent of his, nor any person or persons on his behalf, received or been allowed the same; for this deponent hath examined his books containing the accounts between him and the said William Fullarton, as colonel of the said 23rd regiment of light dragoons, in which books an entry of such payment ought to have been, if such payment had been made. And this deponent further saith, not any entry whatever is made therein respecting the same. And this deponent further saith, that from all the information he was capable of obtaining, and from the circumstances which came under his observation during the time he was so pay-master, as aforesaid, he had reason to be assured, and believed, and still feels most perfectly assured, and firmly believes, that the said William Fullarton never did, unfairly or improperly pocket or receive any sum or sums of money whatever, on account of the foraging of any horse or horses of the said 23rd dragoons. And this deponent further saith, that in all his transactions with the said William Fullarton respecting the said regiment, he found him to be most honourable, liberal, upright, and disinterested; and that he this deponent verily believes, that he the said William Fullarton was incapable of making, or knowingly permitting any agent in his behalf, or any officer of the said regiment, or other person whatever to make a claim which he did not in his conscience believe was founded in justice and right.

N. KIRKLAND.

Sworn in Court, this 4th day
of February, 1809.

By the COURT.

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, Esq.

Affidavit of *Alexander Bruce*.

Alexander Bruce, of Mainholm, in the county of Ayr, North-Britain, formerly overseer to William Fullarton, late of Fullarton, esq., and colonel of the late 23rd

regiment of light dragoons, deceased maketh oath and saith, that the said William Fullarton raised the said regiment of light dragoons, both men and horses, without any expense to government. And this deponent further saith, that from the raising of the regiment in the year 1794, until the year 1802, when the said William Fullarton went to the West-Indies, he resided almost constantly in England, and was only occasionally in Scotland. And this deponent further saith, that the said regiment of light dragoons was placed on the Irish establishment, and as this deponent hath heard and verily believes, did, in the year 1797 form part of the army under the command of the right hon. earl Carhampton, then commander-in-chief of his majesty's forces in Ireland, but that an augmentation of the said regiment having been ordered, the recruiting for the said augmentation was chiefly carried on at Ayr, which was appointed headquarters. And this deponent further saith, that he hath heard, and verily believes it to be true, that in the month of June, 1797, the said earl Carhampton directed all recruiting parties in Great Britain to join their respective regiments. And that in consequence of such order, a number of men and horses marched from Ayr, in August, 1797, for head-quarters in Ireland, under the charge of quartermaster Pagan, and that several horses which were unable to march, from being sick or lame, were left behind, under the charge of this deponent, who recollects that the said William Fullarton urgently directed, that every horse capable of marching might be sent over to Ireland, according to the above order. And this deponent further saith, that the said horses were so left under his care in consequence of all the recruits, excepting one, having marched to join the regiment. And this deponent further saith, that he took charge of the said horses in consequence of general directions having been given to him by the said William Fullarton, to give every aid in this deponent's power, to the recruiting parties, and not from any particular directions respecting the horses so left behind. And this deponent further saith, that a subsequent order having been issued to recommence recruiting, the said horses remained in Scotland until November, 1798, when he this deponent delivered the same to captain William Maxwell, the officer then in Ayrshire on the recruiting service, who sent them to head-quarters in Ireland, under charge of serjeant Mitchell. And this deponent further saith, that during the time that the said horses so remained in Scotland under the charge of this deponent, he, this deponent,

procured forage for them from various persons, and that the expense of such forage was settled for in this deponent's accounts with Mr. Alexander Walker now deceased, the agent of the said William Fullarton. And this deponent further saith, that he never drew on the pay-master of the said regiment for the said forage-money, nor did he ever receive any money from him on account thereof, although there was undoubtedly due to the said William Fullarton, a considerable sum of money on account of such forage. And this deponent further saith, that in the month of November, 1797, the said William Fullarton having urgently directed a specific return to be made of each horse which had remained behind as aforesaid, to be forwarded to lieut.-colonel Spencer, then commanding the said regiment in Ireland, to be by him transmitted to col. Handfield, secretary to earl Carhampton, the commander-in-chief, for his lordship's information, and no officer belonging to the regiment having been left in Ayrshire, this deponent made up such specific return, which he this deponent signed, and sent to the said William Fullarton, who was then in London, in order that the same might be transmitted to Ireland. And this deponent saith, that he verily believes that such return was satisfactory to the commander-in-chief, because he saith, that he never was called upon to make any other or further return, or for any explanation thereof.

ALEXANDER BRUCE.

Sworn before me, one of the Magistrates of Ayr, and one of his majesty's justices of the peace for the county of Ayr, this 30th day of January, 1809,

JAMES DONALDSON.

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, Esq.

Affidavit of Mr. George Pagan.

George Pagan, of Cloncaird, in the county of Ayr, in North-Britain, maketh oath and saith, that he was formerly quarter-master in the late 23rd regiment of light dragoons, of which William Fullarton, esq. now deceased, was colonel, and was particularly employed in the recruiting service of the said corps, in Scotland. And this deponent further saith, that he well knows that on all occasions the said William Fullarton strictly enjoined all the officers of the regiment, and particularly those employed in the recruiting service, to adhere implicitly in

all respects to the king's instructions, and to the regulations issued by the commander-in-chief. And this deponent further saith, that the said regiment was placed on the Irish establishment, and embarked for that kingdom in the year 1795, but that an augmentation for the said regiment having been ordered, the head-quarters for recruiting was fixed at Ayr aforesaid. And this deponent further saith, that he was at Ayr, on the said recruiting service, in July 1797, when an order came from earl Carhampton, then commander-in-chief in Ireland, directing all the recruiting parties and recruits belonging to the said regiment, to join the said regiment in Ireland, or to that effect, and that, in consequence of such order, he this deponent marched from Ayr at the end of July in that year, with all the recruiting parties and recruits (except 1), and 51 horses, to the head-quarters, at Dromilly, in Ireland. And this deponent further saith, that several horses sick, or lame, or otherwise unable to march, were then left behind, at Ayr, and there not being any officer belonging to the said regiment in Scotland, the same were left under the care of Mr. Alexander Bruce, overseer to the said William Fullarton. And this deponent further saith, that the said horses continued at or in the neighbourhood of Ayr aforesaid, under the care of the said Alexander Bruce, until the month of November, 1798, when, in consequence of orders received from the said William Fullarton, directing that all the horses so left under the charge of the said Alexander Bruce, in whatever condition they might be, should join the regiment without delay, the same were delivered by the said Alexander Bruce to captain William Maxwell, of the said regiment, and were sent over to Ireland, under the care of serjeant Mitchell of the said regiment, which this deponent knows from being present when the said horses were so delivered to captain Maxwell as aforesaid, he this deponent having a short time before returned to Scotland to recommence the recruiting service.

GEORGE PAGAN.

Sworn before me, one of the magistrates of Ayr, and one of his majesty's justices of the peace for the county of Ayr, at Ayr, the 28th day of Jan. 1809,

JAMES DONALDSON.

IN THE KING'S-BENCH.

The KING

versus

EDWARD ALURED DRAPER, Esq.

Affidavit of the Earl of Buckinghamshire.

The right honourable Robert, earl of Buckinghamshire, of Hamilton-street, Piccadilly, in the county of Middlesex, maketh oath and saith, that he this deponent was his majesty's secretary of state for the colonial department, in the year 1802, when William Fullarton, esq. now deceased, was appointed by his majesty, first commissioner for executing the office of governor in and over the island of Trinidad. And this deponent further saith, that no communication whatever was made to him by his royal highness the duke of York, commander-in-chief, &c. respecting any unfaithful returns as having been made by the said William Fullarton, as colonel of a regiment in his majesty's service. And this deponent further saith, that an official communication was made by his said royal highness to this deponent, whilst secretary of state, respecting some claims of certain persons for furnishing various articles to the late 23rd regiment of light dragoons, for payment of their demands, stating to this deponent the expediency of colonel Fullarton not proceeding on the intended service until he the said William Fullarton should have settled the demands against him to the satisfaction of the secretary at war and the Irish government. And this deponent further saith, that the said communication from his royal highness the duke of York, he caused to be transmitted to the said William Fullarton, for his explanation. And this deponent further saith, that in consequence of the explanation returned by the said William Fullarton, he was permitted to proceed on the above-mentioned intended service.

BUCKINGHAMSHIRE.

Sworn in Court, this 1st day of February, 1809.

By the COURT.

Mr. Garrow.—It is now my duty to submit to your lordships some observations on the part of the prosecution.

It must have occurred to the Court, that the defendant, colonel Draper, now presents himself for their judgment under very peculiar circumstances—

Mr. Sergeant Best.—My lords, if I am under a mistake I beg your lordships' pardon.—There are two circumstances which Mrs. Fullarton in her affidavit states that she does not believe—The first relates to sir Samuel Hood, —now I have sir Samuel Hood's own affidavit in support of it. And she also states, that she does not believe there was any such conversation between colonel Fullarton and Mr. Oswald as had been stated in colonel Draper's affidavit—I have his affidavit to that fact.

Lord Ellenborough.—Still she may not believe it.

Mr. Sergeant Best.—These affidavits show the fact.

Mr. Justice Le Blanc.—These affidavits are not before the Court.

Mr. Dauncey.—Sir Samuel Hood was not in this country when this cause first came before the Court; but as soon as he returned, he put in that affidavit. And we are not aware, that that is not such an affidavit as the Court might receive when it is once understood by the Court that it would have been receivable if it had been produced at an earlier period;—that it was not then produced was not the fault of colonel Draper, but was owing merely to the circumstance of sir Samuel Hood being absent on the service of his country.

Lord Ellenborough.—This case stood over only for the special purpose of answering the affidavits on the part of the defendant.

Mr. Marryat.—I humbly submit that the defendant is entitled to have these two affidavits read.—Judgment may either be on a conviction by the verdict of a jury, or it may be by default. By the ordinary course of the Court, when as in this case it is a judgment by default, the defendant is entitled to have his affidavits read after those on the part of the prosecution. Is there any thing in this particular case to except it from the general rule? and more especially as sir Samuel Hood was not in this country, and consequently could not make the affidavit when colonel Draper was originally before the Court? Had he not been absent, the affidavit would have been regularly made, and at all events I contend that the affidavits on the part of defendants are generally read last.

Mr. Garrow.—The last argument that has been addressed to the Court by my friend Mr. Marryat, was addressed to them without success in the last term. The answer is, that there is no reference to these matters in the affidavits which have now been read.—We have now, my lords, at length arrived at the period at which you are called on to consider the measure of punishment to be inflicted on the defendant;—and I believe I may venture to say, that if any of your lordships have cast your eyes on that printed book, from which the passages stated in this indictment are selected, the Court may expect from me, that while on the one hand I discharge my duty to my client, nothing on the other will induce me to go beyond what I conceive to be my duty.

In the life-time of colonel Fullarton, an action against the defendant had been commenced, stating some of the scandalous and libellous passages in this book, and the defendant, if he had pleased, and if he had been able, might have justified those passages. I do

not detail to you, at any length, the proceedings that took place on that action. It abated by the death of the plaintiff, and this prosecution has been instituted in consequence of the opinion of his surviving widow, that a sacred duty which she owed to his memory and honor required it. We are now, my lords, to consider, who these parties are, what is the nature of the libel, and under what circumstances it was published. And unless I have totally mistaken all the views which the Court have professed to take on such subjects,—unless I have mistaken all their former judgments, this is a case calling for as severe a sentence as any private libel that I have ever heard.

My lords, I charge colonel Draper,—a gentleman, a man of education, and a military man,—with publishing a slanderous libel against another gentleman, equal in rank, and likewise a military man. The libel is of the most offensive nature that can possibly be described—He states, in general terms, that colonel Fullarton is totally destitute of all claim to a character for veracity—that under the hypocritical mask of the performance of a public duty, he gratified his own private malice, and invented base calumnies against a meritorious, innocent and honourable man. And then he is charged specifically, as a man lost to all sense of honour, and forgetting his duty to himself as well as to his country, with making false returns, in order to plunder the public, in his situation of colonel of the 23rd regiment of Dragoons which he had raised in Scotland.

These, my lords, are heavy charges, and before any man ventures in any shape to present them to the public, he should have been perfectly convinced of their accuracy. If any facts had reached him which seemed to be equivocal and doubtful, before he published them he ought to have been prepared with his proofs, and he ought not at the last to be looking out for the means of proving them, and to be unable to say,—“I made these charges not because I had any pleasure in stating these facts—not because I was desirous of abating from that reputation which colonel Fullarton had enjoyed during a long series of years,—I said it not for the purpose of destroying his reputation,—but from a sense of duty, and that his real character might be unmasked, and his delinquency exposed.”

My lords, colonel Draper must excuse me, if I say these charges were made at a time when he must have known and felt, that there was no foundation for them. It is not a recent discovery that a complete and accurate explanation had taken place respecting the communication to the commander in chief in England, from furnishers in Ireland. When his majesty's government were about to employ colonel Fullarton on an important commission, the commander in chief here thought it his duty to transmit that communication to the secretary of state, that colonel Fullar-

ton might not leave England, till he had given a satisfactory explanation relative to that matter; an explanation was demanded of colonel Fullarton, and it appears from colonel Draper's own affidavit, that he did know that in consequence of that application from the commander in chief to the secretary of state, such explanation took place, and colonel Draper did know of the permission of government for colonel Fullarton to depart for his government of Trinidad. I have said, I think it must appear from colonel Draper's affidavit, that he did know it—it is enough for me that he *might* have known it, and it was *his duty to make inquiry*. When he knew colonel Fullarton was called to give an explanation in June, 1802, it became colonel Draper, before he published these charges, to have been perfectly certain that there must have been fair ground for that inquiry. But if colonel Draper believed this, was that the course for him to take? would it not have been fit for him to apprize his majesty's government, that there were large demands against colonel Fullarton, which ought to have been put into a course of inquiry? He might have called on colonel Fullarton to present himself before a court-martial, on a charge of fraud and imposition on the government.

Now I think I may take the liberty of asserting, that there was not the smallest foundation for such charges. But let us see at what time this publication was presented to the public, and what is the nature of it. The defendant cannot excuse himself by saying it was owing to irritability of temper, he being taken by surprise by some letter that was written to him. You find this gentleman engaged in important, arduous military concerns, and he must have occupied a considerable portion of his time in composing the book lying before you. It contains about 300 pages, not in ordinary language in which common writers compose, but comparing it with the writings of an ordinary man, it seems to be a laboured performance, edited with great care, and sent into the world—not certainly with much care as to the feelings and reputation of other men, but with great attention to the character of an author. Now what is it that has induced this gentleman to this publication, which is no less than an Address to the British Nation?—Colonel Draper, an officer in his majesty's guards, thinks fit to address the British nation on the subject of the prosecution of general Picton for inflicting an unlawful punishment on a person of the name of Luisa Calderon:—And when a motion for a new trial was pending before this Court, that was the time this gentleman thought it necessary to address the British public—a time when farther proceedings to obtain a second conviction were in progress, and when it was attempted to be proved, that by the Spanish law, general Picton was justifiable in committing this act. In this

state of things, he describes the prosecution not to have originated in a sense of public duty (for so he expresses it), but to have originated in the malice of colonel Fullarton. He represents colonel Fullarton as originating and carrying on this prosecution from malice, and for the purpose of oppressing general Picton.

Such was the period at which this publication came forth.—Colonel Draper is indicted for this offence, he suffers judgment to go by default, and then he puts on the files of this court affidavits tending to show that the charges are founded in fact!

My lords, I cannot say this is quite new, because in the course of the present term we had proceedings of a similar nature, on which your lordships have not yet proceeded to give judgment; but it is not very common.—When persons are convicted, or have allowed judgment to go by default, generally speaking, you find the defendants submitting themselves to the law, and professing contrition for having wounded the feelings of other persons, for their violation of the law, and for having acted against the public peace.—Not so the present defendant:—now that colonel Fullarton is in his grave, and when the charges cannot be met by a positive denial,—if indeed we were to consider colonel Fullarton on his trial, which I know the Court will not,—the charges are republished at a time when they can only be met by circumstantial evidence, by a reference to documents and persons likely to be acquainted with, from having been immediate parties to, these transactions which took place in the year 1797. And, my lords, it is not to be wondered at, that this respectable and honourable lady, judging with a strong mind, as she certainly does for herself, and having it for her main object, as she has incontrovertibly, to vindicate the character and honour of her husband—when the day of punishment comes, and when she finds the affidavits made that were made on the part of the defendant, and when it was recollected that very probably these affidavits would be found as an appendix to some new publication,—it was extremely natural for her to wish to contradict them. It would have been difficult for those who are concerned for her to prevent the occurrence of that which has taken place, and which does the highest honour to the feelings of Mrs. Fullarton.

I pray your lordships' judgment against the defendant, for one of the most serious libels, that ever was published by one individual against another. And I intreat you to do what I know you will do, namely, to consider the character of Mr. Draper,—that he is no mean writer,—that he is not an obscure scribbler, writing in the gloom of a garret, and vending his publication in the dark; but he sends it forth with his name, and tells the public "this comes from a man of high rank in his majesty's army; it is published at a most important time, and is address-

ed to the British nation for their attentive perusal." I have taken the liberty of making these observations, wishing not to go beyond the line of my duty, but at the same time being anxious not to do less than my duty.

Mr. Nolan.—My lords, it is my duty to address some observations to your lordships in addition to what has fallen from my learned friend, in regard to the punishment of the gentleman on the floor. My lords, it is not very usual for defendants to put in, as this defendant has attempted, justifications of misconduct, as grounds for mitigating punishment. This step has imposed upon the prosecution the duty of laying before the Court affidavits to negative the facts averred, and to disprove the mal-practices imputed to colonel Fullarton.

My lords, the defendant's affidavits, as they asperse the character of this deceased gentleman (however abortive the attempt) renders a serious punishment for this gross libel more necessary and important. The facts asserted in the libel are three.—First, that colonel Fullarton had been guilty of making unfaithful returns, while colonel of the 23rd regiment of dragoons. Second, that an official communication had been made by lord Carhampton to the government, in Ireland, that he had made such returns: and—Third, that this representation had been forwarded to the adjutant-general's office here; and that the commander in chief had, to his immortal honour, at the time when colonel Fullarton was appointed to the government of Trinidad, communicated that official document to the secretary of state. My lords, these are averred in this libel as positive facts, and the defendant labours at a justification which in effect admits that not one of them is true.

It is now acknowledged that lord Carhampton never made such representations to the government of Ireland—and that there was no such official document. Lord Carhampton, who makes an affidavit, does not pretend that he ever preferred any complaint to the government of Ireland on the subject. The complaint actually made, was on a subject perfectly distinct from that imputed to colonel Fullarton by the libel.—Supposing these new charges in the affidavits to be as true as they are false, by what confusion of intellect can this gentleman put them forward as a justification of the libellous imputations which are proved to be untrue? However, colonel Draper has thought proper to assert in his affidavit, and to have them supported by lord Carhampton, matters directly negatived by those now read.—Colonel Draper's affidavit charges colonel Fullarton with making unfaithful returns on the 1st of September, 1797.—That this did not proceed from mistake, but was done to conceal the circumstance of 14 horses which belonged to the regiment being applied to colonel Fullarton's use, while they were

charged as effective in the regimental accounts, and the expense of keeping them was defrayed by the state.—In order to prove this, a conversation is stated to have taken place between a Mr. Oswald and colonel Fullarton, in the presence of Mrs. Fullarton, with regard to the leaders of his carriage, in which it was stated that these carriage horses had been borne on the strength of the regiment.

It is also asserted, that a forged receipt for 300*l.* and upwards has been put in under the name of John Bruce, and passed to the regiment's account, and colonel Draper verily believes that the money came to the use of colonel Fullarton. In support of which a correspondence is set forth between the War-office in Ireland and colonel Spencer, then commanding the regiment, stating that these horses had been returned to the regiment when under the command of colonel Fullarton.

These are the facts, so far as I have been able to collect them, which appear on the affidavits on the part of colonel Draper, except a complaint made by two tradesmen of the names of Morris and Spencer, respecting some saddlery, which was transmitted from Ireland to the commander in chief in this country, and by him to the secretary of state. Independent of the explanation contained in our affidavits, the observation which fell from my learned friend, Mr. Garrow, is conclusive of the matter. That charge was made before the proper tribunal; it was there investigated, and it was proved that colonel Fullarton was not to blame in any part of the transaction; in consequence of which he was permitted to go to his government in Trinidad. This was the only representation that was made by the commander in chief to the secretary of state, and the complaint is totally of a different nature from that adverted to by colonel Draper in his libel.

With regard to the charge of making unfaithful returns, you have the affidavit of the only person who can state what the transaction was. It is the affidavit of captain Bradshaw, who was at the time the adjutant of the regiment, and acted as pay-master in the absence of captain Jameson, the regular pay-master. Captain Bradshaw declares that colonel Fullarton, coming into Ireland, went to Dromilly, and arrived there on the day the returns were to be made. They had been previously made up without his knowledge, and without any communication with him and were signed by him without examination, not as verifying the contents from his personal knowledge, but in compliance with military etiquette, as the commanding officer then with the regiment at head-quarters. Your lordships will see that this is the only means by which, in this stage of the case, that transaction can be explained. Taking it for granted that the return was incorrect, and proved to be so, the mistake was made by captain Bradshaw, the

adjutant, and the return was originally to have been signed by colonel Spencer, then lieutenant-colonel, and not by colonel Fullarton.

My lords, the conversation that is supposed to have taken place between colonel Fullarton and Mr. Oswald, in the presence of Mrs. Fullarton, is relied upon as bringing home to colonel Fullarton a knowledge of the fraud. Mrs. Fullarton has denied it in as positive terms as it is possible to deny a conversation of this sort, at the distance of time from the date given to the transaction, which is twelve years back; for she states that no such conversation ever did take place in her presence, nor at any other time with the said colonel Fullarton, *as she verily believes.*

Now, my lords, in the first place, I humbly urge, that the words, "as she believes," are to be referred only to the last part of the sentence. Colonel Draper charges in his affidavit that the conversation took place in her presence, which is thus positively denied. But I shall even take it that the words "as she believes," rides over the whole sentence, still it is mere idle quibbling to say that this would not be sufficient; if untrue, it would subject the party to all the pains and penalties incident to taking a false oath.

My lords, the next charge respects a forged receipt in the name of John Bruce, for 300*l.* and upwards. Much of the affidavits of Mrs. Fullarton, and of Mr. Alexander Bruce, overseer to colonel Fullarton, go to this imputation. That there could be no occasion for a forgery is manifest, for the colonel was entitled to the money for which it is supposed to be given, although he has never received it. The reason why these horses were left under the care of his overseer was, not for any convenience to colonel Fullarton; but it appears, by the affidavits of Pagan, as well as by that of Bruce, that when the quarter-master, Mr. Pagan, was ordered to join the regiment, with all recruits, men and horses, that these horses did not join the regiment under major Maxwell, in August, 1797, because they were lame and in an unserviceable state, and that that was the sole reason for their being left behind.

My lords, with regard to the alleged forgery, you have the best and only evidence that can be adduced on the subject. Captain Nugent Kirkland was pay-master of the regiment at the time the receipt bears date;—he positively asserts, that he never knew of any forged receipt having passed through his hands, and it must have passed through his hands, as pay-master of the regiment, if it had passed at all; and he states that colonel Fullarton was not with the regiment at the time the receipt bears date. He states farther, that colonel Fullarton very seldom was with his regiment while in Ireland, but was generally in England; and that while the regiment was there, the whole care of it devolved upon colonel Spencer. What object

could there be in such a forgery, when colonel Fullarton was entitled to receive the money, which was actually expended by his overseer, Alexander Bruce? and why should it be forged in the name of John Bruce? Captain Kirkland swears that no such sum was paid through his hands, that he has examined his books and his entries, and that it would have been entered in his books if such a payment had been made; and that although purporting to be a receipt for a sum of money received by captain Kirkland for the use of colonel Fullarton, it never was paid to the deceased colonel Fullarton, or to any agent for him. If the crime was committed, it must have been exclusively for the sake of doing something criminal. Its manifest inutility strips the charge of all probability. Who can believe that a gentleman of talent and honour, who was actually entitled to a sum of money, could forge a voucher for payment, when he might have safely signed one with his own name, or that he would give any voucher real or unreal for payment, when it is proved by captain Kirkland, beyond the possibility of doubt, that he never received the money!

My lords, these are the most material circumstances, as they apply to the affidavit of the defendant himself. But he has been joined in an affidavit by a noble lord, and however high the rank of that person may be I am sure the Court will feel it to be my duty to observe on what he has sworn.

The noble lord having stated that he had ordered returns to be made for September, 1797, goes on to swear that he was at that time very much dissatisfied with the conduct of colonel Fullarton, on account of his returning certain horses which were afterwards discovered to be at grass, and were nevertheless borne on the strength of the regiment for a considerable time.—That he had made minute inquiries into that fact, which he found to be true, &c. &c.

When it is stated that colonel Fullarton drew the subsistence money (while absent from his regiment) for other purposes, we might have hoped that the noble earl would have been more definite in his charge, more particularly as this noble earl does not state his imputations as matters of suspicion, but as matters of which he had positive proof. So far as this noble person connects himself with the case, it is demonstrated by his own statement, that he has either concealed and sheltered, for a length of time, scandalous frauds and abuses, or that he has now brought forward an unjust charge, which is positively untrue. That it is so, is proved by the affidavits of disinterested persons which have been brought before the Court.

Captain Bradshaw and captain Jameson were adjutant and paymaster at the time the complaint alluded to was made; they state what the ground and foundation of the charge was, namely, that by the express di-

rections of colonel Spencer, at the time colonel Fullarton was not with his regiment, part of the subsistence money had been otherwise applied, but applied for the use of the regiment, namely, in paying for sadlery and other appointments. That on this account a complaint had been laid before lord Carhampton, by the regimental agents; lord Carhampton has so far misrecalled the transaction, as to state that he sent for colonel Fullarton, and animadverted strongly on these particulars, and also with regard to the horses at grass. This he states, when it appears by colonel Draper's own affidavit, that it is impossible it could be true. It appears by the affidavits, that colonel Fullarton went into Ireland in August, 1797, and returned on the 16th of September of that year; it further appears, from the letter of colonel Handfield, set forth in colonel Draper's own affidavit, that the first communication with respect to these horses was made on the 2nd of November, 1797, when colonel Fullarton was not in Ireland,—and yet this noble earl comes forward to state in his affidavit, that having received such a complaint, he sent for colonel Fullarton, and animadverted to him upon it! The communications of colonel Spencer with colonel Handfield also demonstrate the mistake. I advert particularly to this for two reasons:—In the first place to show how extremely difficult it may be for any gentleman, against whom a charge is made at the distance of twelve years, to repel the imputation, however unfounded; for it is truly providential, that colonel Fullarton's widow has been enabled to bring forward, at this distance of time, all the persons concerned in these transactions in the regiment, to answer and refute the charges which have been so unjustly made against her departed husband. If lord Carhampton is mistaken on a subject like this, where it was his duty to recollect—to be certain of the facts before he made this affidavit—I am sure I do not go too far in saying, that the loose expressions and loose recollection of facts at such a distance of time by others, cannot amount to the smallest indicia of colonel Fullarton's conduct having been (as stated by lord Carhampton) incorrect, or of this imputation against him having the slightest possible foundation.

My lords, I have gone at greater length into this subject than I could have wished, but not farther than my duty compelled me, in stating the facts mentioned in the different affidavits; and I positively affirm that there is no part of the charges stated in the affidavits brought forward by colonel Draper, or in his book, which have not met with a plain and decisive answer, negating every particular as far as it is possible for human means to do so. I say every part of them has been negated, notwithstanding the very strong disadvantage arising from the

gentleman who was himself the subject of the accusation being no longer in existence, to give personally the most direct contradiction to this unfounded attack on his character and honour; but it is given by the whole tenor of his life and conduct in all the various situations which he has filled, with credit to himself and advantage to his country.

My lords, colonel Draper has stated in his affidavit that previously to his writing this libel, colonel Fullarton had published something that had referred to him;—but it is but justice due to colonel Draper to mention, that he has also stated that he gave the first provocation, by having originally published something against colonel Fullarton. He avows that he wrote a letter to general Picton which charged colonel Fullarton with a wilful breach of veracity, in having misstated a conversation, and he admits in a subsequent part of the affidavit that this letter was published with his consent, previous to the time when colonel Fullarton wrote the publication at which colonel Draper took offence. If one gentleman charges another in a point so serious to his honour as a breach of veracity, must he not expect that some answer in the same terms and style will be made to him in return, especially when it had been introduced into an affidavit? Your lordships must observe that colonel Fullarton's fame, honour, and character were concerned both in the prosecution against general Picton, and in the contents of the affidavit. But col. Draper engaged in this matter as a volunteer, without any interest, and without any personal provocation. No charge—no insinuation was made against him. Colonel Fullarton answers the publication, and confines himself merely to negating the charge brought against him by colonel Draper. This deceased gentleman restricted himself to the precise transaction; he did not rake up all the transactions of colonel Draper's life,—he did not go into matter totally irrelevant, although first provoked and excited to do so by the conduct of colonel Draper. He went no farther than the answer to the charge made against him. Can it be said by his advocates that colonel Draper has stinted his animosity to the same limit?

My lords, it may be attempted to observe in mitigation, that an action was brought for this libel, and great delay had been occasioned by colonel Fullarton in bringing it to trial. There are affidavits, not now before the Court, but which were read in the first instance, from which it appeared that the delay was not owing to colonel Fullarton. A commission was obtained to examine witnesses in Scotland by colonel Draper; the official return to it was, that there were no witnesses in Scotland who could give evidence. The justification put on the record did not amount to a justification in point of law. But colonel Fullarton was anxious to have the matter brought speedily before the Court. He chose to have the

cause go to a trial immediately, and waved this objection, in order to have the truth of the charges investigated. In point of fact the reason of delay has been owing to colonel Draper's own conduct.

Your lordships are to consider, what is the enormity of the offence of having written such a libel, couched in the grossest, the foulest language. It was published to the world in the midst of a more important trial, at the very time when a motion for a new trial was pending. Its effect might have been to influence the minds of another jury. And I must say, that the whole tenor of that book showed what was the design of colonel Draper. Of the honorable gentleman I mean to say nothing disrespectful out of this cause; but I must observe, that every person who had any connection whatever with that case was libelled and treated in a manner which does no credit to him. Persons who address themselves to the Court from this bar, never mingle their private passions with the discharge of their public duty; but it has become the daily practice to libel and calumniate them on every occasion, because they are conscientious in discharging their duties to their clients. If col. Draper had not had greater forbearance shown to him than he has shown to others, he might have been brought here before upon other prosecutions. He has, under these circumstances, thought proper to publish one of the grossest libels that could be written either on the living or the dead. His mode of defence has aggravated the malignity of his offence. He is now before your lordships for judgment, your lordships are apprised of all the circumstances of the case, and will pronounce such a judgment as you think the public justice of the country requires.

Mr. Sergeant *Best*, in mitigation of punishment, was stopped by the Court.

Lord *Ellenborough*.—In this case there is very much to lament. There has been a great deal of irritation, the continuance of which it is the anxious wish of the Court to prevent.

This case presents itself before the Court under very singular and peculiar circumstances. It is an indictment which has been preferred in respect to part of this publication, after an information had been filed as to other parts of the same pamphlet, upon which information judgment has been passed on the defendant. It appears from the affidavit of col. Draper, that there has been no republication of the libel since the criminal information was filed. It appears that the parts of the pamphlet which are now in question before us, were made the foundation of an action by col. Fullarton in his life time. It stood for trial, and the present indictment was only preferred in consequence of the abatement of that action. It likewise appears to the Court, upon affidavit, that colonel Fullarton answered that libel by writing a publication of his own. Under these circumstances, after having heard all the alle-

gations brought forward as charges against colonel Fullarton, the answers given to them by the affidavits which have just been read on the part of the prosecution, and the arguments and comments upon them,—the Court have yielded to the wishes and honourable feelings of this lady, before interposing any observations. But the time is now arrived when it is material for the Court to state, that they think the purposes of justice will be best answered (and one of the most beneficial purposes of justice is, to prevent any farther irritation or injury), by suffering the case to remain where it is.

From the situation of the parties, we cannot suppose that there will be any irritation on one side; but on the other side, to prevent the continuance of any irritation, or the recurrence of it, it would be fit that col. Draper should enter into his own recognizance, with that of two other sureties, to come up, if called upon by the Court to receive judgment for that part of the libel which is contained in this indictment, and in the mean time to be of good behaviour.

Mr. Sergeant Best.—What the Court has proposed is very kind to colonel Draper, and he accedes to it; as his counsel, I thank the Court. And col. Draper desires me to state, that if he has said one word that could give a pang to the feelings of this lady, it would give him more sorrow than it could give even to her.

Lord Ellenborough.—Though it would be ultimately in the power of the learned counsel for the defendant to have a full hearing, yet the very hearing is a source of farther irritation, which every honourable and feeling mind would wish to be avoided on such a subject.

Mr. Sergeant Best.—After what your lordship has said, I do not wish to be heard.

Mr. Dauncey.—The irritation arose from the provocation.

Lord Ellenborough.—I do not mean merely the provocation on this part of the subject, but the whole of the irritation arising out of these very unfortunate discussions.

Lieutenant-colonel Draper entered into his own recognizance for One thousand pounds, with two sufficient sureties in Five hundred pounds each, that the defendant would, if called upon, come up to receive the judgment of the Court, and in the mean time to be of good behaviour.

Wednesday next after five Weeks from the Feast-day of Easter, in the forty-ninth Year of King George the Third.

MIDDLESEX.

The KING

against

EDWARD ALURED DRAPER, Esq.

The defendant being present here in court, and being, by his own default, convicted of certain misdemeanors in printing and publishing certain scandalous libels whereof he is indicted,—upon reading the several affidavits of the honourable Marianne Hamilton Fullarton, Thomas Joseph Moore, and the affidavit of Alexander Bruce thereto annexed, the said Thomas Joseph Moore and the affidavit of George Pagan thereto annexed, Thomas Bradshaw, the right honourable Robert earl of Buckinghamshire, Nugent Kirkland, esq. John Spottiswoode, esq. and the affidavit of John Jameson, esq. thereto annexed, and the said Thomas Joseph Moore and the affidavit of John Murdock, esq. thereto annexed. And upon hearing counsel on both sides, he the said defendant gives security by his own recognizance in the sum of One thousand pounds, with two sureties in Five hundred pounds each, for his personal appearance in this court whenever he shall be thereto required by this Court, in order to receive the sentence of this Court in this prosecution, and in the mean time to be of good behaviour.

Mr. GARROW for the Prosecution.

Mr. Sergeant BEST for the Defendant.

By the COURT.

679. Proceedings on the Trial of JOHN HARRIOTT HART and HENRY WHITE, before the Hon. Sir NASH GROSE, Knight, one of the Judges of his Majesty's Court of King's-Bench, and a Special Jury ; for certain Libels upon the administration of public Justice in England, upon the Trial by Jury, upon the Hon. Sir Simon Le Blanc, Knight, one of the Judges of his Majesty's Court of King's-Bench, and upon the Jurors by whom Thomas Bennett and William Chapman had, at their respective Trials for Murder, been acquitted : June 16, 48 GEORGE III. A. D. 1808.*

COURT OF KING'S-BENCH.

Guildhall, Thursday, June 16th, 1808.

THE JURY.

J. Miron, Basinghall-street, merchant, Foreman.

Wm. Robertson, Little St. Helens, merchant.

Wm. Jameson, Great Distaff-lane, merchant.

Wm. Walford, London-wall, merchant.

Tho. Brazier, Bishopsgate-street, green-grocer.

Tho. Dawson, ditto, poulterer.

James Davies, jun. ditto, gentleman.

Rowley Kent, ditto, stationer.

Joseph Warmington, ditto, taylor.

John Debatt, Poultry, pastry-cook.

Wm. Andrews, Cheap-ward, draper.

Ezra Tibbs, Bucklersbury, victualler.

The Information was opened by Mr. Richardson. It was as follows :

Of HILARY TERM in the 48th year of the reign of King George the Third

London } **BE** it remembered that sir Vito wit } cary Gibbs knight attorney-general of our present sovereign lord the king who for our said lord the king prosecutes in this behalf in his proper person comes into the Court of our said lord the king before the king himself at Westminster in the county of Middlesex on Thursday next after the Octave of the Purification of the blessed Virgin Mary in this same term and for our said lord the king giveth the Court here to understand and be informed that before and at the respective times of the printing and publishing the several scandalous malicious and defamatory libels herein-after mentioned the honorable sir Simon Le Blanc knight was and continually

since hath been and still is one of the justices of our said lord the king assigned to hold pleas before the king himself to wit at London in the parish of Saint Mary-le-Bow in the ward of Cheap and that heretofore to wit on the eleventh day of January in the forty-eighth year of the reign of our sovereign lord George the third by the grace of God of the United Kingdom of Great Britain and Ireland king defender of the faith a certain session of Oyer and Terminer and Gaol Delivery of our sovereign lord the king was holden by adjournment for the jurisdiction of the admiralty of England at Justice-Hall commonly so called situate in the street called the Old Bailey in the suburbs of the city of London before the right honourable and right worshipful sir William Scott knight doctor of laws and in the high court of our said lord the king of the Admiralty of England lieutenant commissary judge and president of the said court sir Archibald Macdonald knight chief baron of our said lord the king of his Court of Exchequer the aforesaid sir Simon Le Blanc the worshipful George Ogilvie and John Stoddart respectively doctors of laws and others their fellows justices of our said lord the king assigned by letters patent of our said lord the king to inquire upon the oath of good and lawful men of our said lord the king's city of London and of our said lord the king's counties of Middlesex Essex Surrey Kent and Borough of Southwark in the county of Surrey and every or any of them and by other ways means and methods according to their best knowledge and ability as well within liberties as without whereby the truth of the matter might be the better known and inquired into concerning all treasons felonies robberies murders and confederacies done or committed in or upon the

* See the next case.

sea or in any haven river creek or place where the admiral had or the admirals had or pretended to have power authority or jurisdiction and also of and concerning other offences injuries and misdemeanors whatsoever committed and done against the form of the several statutes mentioned in the said letters patent and to hear and determine the said treasons and other the premises and to make gaol delivery according to the laws and customs of the kingdom of Great Britain and the statutes in the said letters patent mentioned also to inquire upon the oath of good and lawful men of the city counties and borough aforesaid as well within the liberties as without of all other crimes and offences whatsoever and accessaries thereto whomsoever and howsoever had done or committed upon the high sea or in any haven river creek or place where the admiral had or the admirals had or pretended to have power authority or jurisdiction and to hear and determine all such crimes and offences according to the laws and customs of the kingdom of Great Britain and the statutes in that behalf made and provided as by the laws and statutes of the said kingdom of Great Britain might or ought to be heard discussed or determined by any commissioners or justices by our said lord the king appointed at which said session so then and there holden by adjournment as aforesaid one William Chapman was in due form of law tried by the jurors of a certain jury in that behalf duly impanelled and returned and chosen tried and sworn for and upon the murder of one Robert Dunn specified and charged upon him in and by a certain indictment theretofore to wit at a previous holding of the same session before the said sir William Scott the said sir Archibald Macdonald the said sir Simon Le Blanc the said George Ogilvie the worshipful John Woodfield Compton doctor of laws the said John Stoddart and others their fellows justices of our said lord the king assigned as aforesaid duly found returned and presented against him the said William Chapman by the jurors of a certain other jury in that behalf duly sworn and charged to inquire for our said lord the king and to which said indictment the said William Chapman had pleaded that he was not guilty of the premises therein specified and charged on him the said William Chapman was then and there at the same session so holden by adjournment as aforesaid by the jurors by whom he was so tried as aforesaid found not guilty of the premises in the said indictment specified And the said attor

ney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that heretofore to wit on the eighteenth day of December in the forty-eighth year of the reign aforesaid a certain session of Oyer and Terminer and gaol delivery of our said lord the king was holden for the jurisdiction of the admiralty of England at Justice Hall commonly so called situate in the street called the Old Bailey in the suburbs of the city of London before the right honorable and right worshipful sir William Scott knight doctor of laws and in the high court of our said lord the king of the Admiralty of England lieutenant commissary judge and president of the said court sir Archibald Macdonald knight chief baron of our said lord the king of his Court of Exchequer the aforesaid sir Simon Le Blanc the worshipful George Ogilvie John Woodfield Compton and John Stoddart respectively doctors of laws and others their fellows justices of our said lord the king assigned by letters patent of our said lord the king to inquire upon the oath of good and lawful men of our said lord the king's city of London and of our said lord the king's counties of Middlesex Essex Surrey Kent and borough of Southwark in the county of Surrey and every or any of them and by other ways means and methods according to their best knowledge and ability as well within liberties as without whereby the truth of the matter might be better known and inquired into concerning all treasons felonies robberies murders and confederacies done or committed in or upon the sea or in any haven river creek or place where the admiral had or the admirals had or pretended to have power authority or jurisdiction and also of and concerning other offences injuries and misdemeanors whatsoever committed and done against the form of the said several statutes mentioned in the said letters patent and to hear and determine the said treasons and other the premises and to make gaol delivery according to the laws and customs of the kingdom of Great Britain and the statutes in the said letters patent mentioned also to inquire upon the oath of good and lawful men of the city counties and borough aforesaid as well within liberties as without of all other crimes and offences whatsoever and accessaries thereto whomsoever and howsoever had done or committed upon the high sea or in any haven river creek or place where the admiral had or the admirals had or pretended to have power authority or jurisdiction and to hear and determine all such crimes and offences according to the laws and customs of the kingdom of

Great Britain and the statutes in the said letters patent mentioned or other statutes in that behalf made and provided as by the laws and statutes of the said kingdom of Great Britain might or ought to be heard discussed or determined by any commissioners or justices by our said lord the king appointed at which said last-mentioned session so then and there holden as aforesaid one Thomas Bennett was in due form of law tried by the jurors of a certain jury in that behalf duly impanelled and returned and chosen tried and sworn for and upon the murder of one William Rickman specified and charged upon him in and by a certain indictment theretofore to wit at the same last-mentioned session so holden as aforesaid duly found returned and presented against him by the jurors of a certain other jury in that behalf duly sworn and charged to inquire for our said lord the king and to which said indictment the said Thomas Bennett had pleaded that he was not guilty of the premises therein specified and charged on him and the said Thomas Bennett was then and there at the same last-mentioned session so holden as aforesaid by the jurors by whom he was so tried as aforesaid found not guilty of the premises in the said indictment specified And the said attorney-general of our said lord the king further giveth the Court here to understand and be informed that *John Harriott Hart* late of London printer and *Henry White* late of the same place gentleman well knowing the premises aforesaid but being malicious and ill-disposed persons and unlawfully and maliciously devising and intending to bring the administration of justice and the trial by jury as by law established in England into hatred and contempt among the liege subjects of our said lord the king and to raise and excite disaffection and discontent in the minds of the liege subjects of our said lord the king heretofore to wit on the seventeenth day of January in the forty-eighth year of the reign of our sovereign lord George the third of the United Kingdom of Great Britain and Ireland king at London aforesaid to wit in the parish of Saint Mary-le-Bow in the ward of cheap unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain scandalous malicious and defamatory libel of and concerning the said respective trials of the said William Chapman and Thomas Bennett and of and concerning the verdicts aforesaid according to the tenor and effect following that is to say "To the Editor of the Independent Whig—Sir; The professions you invariably make to the public as editor of the Whig, as well as under the signature of Crito,

will, I hope, animate your pen on the subject of the late trial for three murders at the Old Bailey!!!—The former one for the cruel, systematic, gradual torturing to death a poor sick boy" (meaning the aforesaid trial of the said Thomas Bennett) "was bad enough God knows, but the last" (meaning the aforesaid trial of the said William Chapman) "eclipses every thing before recorded. Henceforth away with the hitherto popular foolish Erskinean boast of "trial by jury;" for the sake of injured humanity let us have no more of these boasts.—It is reported that Mr. Deputy Thomas Loveland, of Aldersgate-street, baker, has the merit upon this occasion of having chiefly contributed to prevail upon the rest of the jury to pronounce the verdict of acquittal" (meaning the aforesaid verdict of acquittal of the said William Chapman) "which has astonished every individual. Your language is mostly nervous strong, and forcibly energetic. Pray, for the sake of injured justice, exert it on this occasion with full force and the effect will be great—Yours in integrity —HUMANITAS—January 13, 1808"—To the great scandal and disgrace of the administration of public justice in England in contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

2nd Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said *John Harriott Hart* and *Henry White* well knowing the premises aforesaid but being malicious and ill-disposed persons and unlawfully and maliciously devising and intending to bring the administration of justice and the trial by jury as by law established in England into hatred and contempt among the liege subjects of our said lord the king and to raise and excite disaffection and discontent in the minds of the liege subjects of our said lord the king and to insinuate and cause it to be believed that each of them the said William Chapman and Thomas Bennett had been unduly wrongfully and improperly acquitted and found not guilty at their said respective trials and to traduce defame and vilify the said sir Simon Le Blanc and the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid and to bring the said sir Simon Le Blanc and the jurors of the said respective juries into public hatred and contempt did afterwards to wit on the twenty-fourth day of January in the forty-eighth year of the reign aforesaid at London to wit in the parish and ward afore-

said unlawfully and maliciously print and publish and cause to be printed and published a certain scandalous malicious and defamatory libel of and concerning the said respective trials and acquittals of the said William Chapman and Thomas Bennett and of and concerning the conduct of the said sir Simon Le Blanc at the said trials and also of and concerning the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid and their respective verdicts aforesaid according to the tenor and effect following that is to say "To Sir Simon Le Blanc" (meaning the aforesaid sir Simon Le Blanc) "judge of the high court of Admiralty—" "My lord; The two trials" (meaning the aforesaid trials of the said William Chapman and Thomas Bennett) "that have recently taken place in the court over which you" (meaning the aforesaid sir Simon Le Blanc) "preside, as one of the judges, have filled the whole country with inexpressible astonishment and alarm! one universal sentiment of horror has prevailed throughout the land, and pervaded the bosom of every individual who has perused the inhuman and disgusting detail! The facts that were adduced in open court, and the subsequent verdict of the jury, have been received with general surprise and indignation! Two brutal ruffians" (meaning the aforesaid William Chapman and Thomas Bennett) "(for who can otherwise name them) stand convicted on the best and clearest evidence that could possibly be obtained, viz. that of the whole ship's crew, of which these wretches were the captains, of having perpetrated the most foul and malicious murders; and yet, notwithstanding their concurrent testimony, supported by the opinions of eminent medical practitioners, are, after a full and deliberate investigation, acquitted by a British jury!!!—To what cause are we to attribute this excessive tenderness, this criminal moderation and forbearance—I confess my lord" (meaning the aforesaid sir Simon Le Blanc) "that I scarcely know how to regulate my feelings, or in what appropriate terms to address you upon the subject; my trembling pen drops from my feeble hand!—I am overwhelmed with shame and confusion!—My swelling heart throbs within my indignant bosom! grief and resentment alternately depress and agitate my troubled mind and render me almost incapable of the task I have undertaken!—By all the tender ties of mutual sympathy and sacred obligations of eternal justice, in the name of humanity, and for the credit of that country to which you have the honour to belong, I implore your lordship" (meaning the said sir Simon Le Blanc) "to revise those

frightful proceedings, and pause upon the fatal verdicts that have passed!—Be not deceived, nor 'lay that flattering unction to your soul' that these horrible and atrocious acts will elude the inquiring gaze of public observation, or, like the fleeting breath of idle rumour, pass away hastily noticed, and remembered no more! No, my lord, our laws and constitution, the tribunals and jurisprudence of England, have received a wound that threatens their destruction! The Magna Charta and Bill of Rights have been almost rendered useless and abolished; the lives and personal safety of individuals have been made the wanton sport of brutal malice; and the chief security and best blessing of our immortal Alfred, the 'trial by jury,' has been perverted and destroyed! In offering these animadversions to your lordship's serious and solemn attention, you cannot, nay, you dare not, falsely or foolishly believe that I am merely echoing the clamorous war-whoop of faction, or sounding the dismal tocsin of ill-founded and unjust alarm! Heavens! that we should live in such degenerate days, when freely to investigate the character and conduct of our constituted authorities, should be accounted blasphemous, or that to plead the cause of injured and insulted human nature should involve the pains and penalties of disaffection and treason! Is mercy then with Englishmen become a crime? Shall pity's soft emotions be restrained, or the defenceless murdered victims of oppression pass to the silent tomb without remonstrance or redress? Forbid it Heaven! While truth and honesty are yet accounted virtues, while liberty, humanity and justice still prevail, and piety remains a willing guest among us, the murderer, the tyrant, the plunderer, and the oppressor shall be upheld to public view—bear Cain's accursed stamp upon their guilty brow, and be consigned to everlasting infamy and shame! What were your lordship's sensations, or those of your professional brethren, upon hearing the evidence of these unexampled and atrocious acts of cruelty; or what might be tokens of the surprise and disappointment that were painted upon the altered countenances of the anxious crowd that were assembled, on receiving the extraordinary and unexpected verdict of the jury, as I did not witness them I cannot tell! It is the report alone that has reached me, and which I have perused with the most poignant feelings of anguish and horror!—Scarcely could I endure the dreadful recital. Had I been present when the acquittal of these monsters" (meaning the said William Chapman and Thomas Bennett) "was proclaimed, with all my respect for the tribunals of my country or deference to the ver-

dict of the jury, I fear the impulse of nature would have prevailed over the timid suggestions of prudence, I should have disturbed 'stern Justice' slumbering on her mercy-seat, and transgressed the rigid boundaries of decorum!

Never did trials more strongly arrest the public attention than those of Bennett and Chapman" (meaning the aforesaid Thomas Bennett and William Chapman) "and never did the verdicts of a jury excite more unequivocal marks of dissatisfaction and disgust! It is not, my lord, that the people of England are either vindictive or cruel, or delight in scenes or spectacles of blood, on the contrary, they are humane and generous to a fault: Our statutes are considered as too sanguinary and penal, and the lenity both of the sovereign and the legislature has frequently interposed to soften the excessive severity and rigor of the laws.—I am willing to believe that both your lordship and the jury were influenced by the amiable motives of humanity since no otherwise can I account either for your" (meaning the said sir Simon Le Blanc's) "concluding observations or their extraordinary verdict! but never surely was this godlike attribute exerted upon more mistaken principles, or under less auspicious circumstances! our celebrated bard has justly observed 'mercy but murders, pardoning those who kill'; and if the punishment of the murderer was intended to operate as an effectual restraint, and a salutary example to protect innocence, and deter the wicked from the perpetration of a similar offence—to suffer the guilty individual not only to escape with impunity, but even to be recorded as justified and absolved from all recrimination or censure, is certainly to encourage the repetition and increase the enormity of the crime. There is a genuine and there is a spurious humanity which are frequently confounded and intermingled, but which nevertheless are distinct and separate in their nature. The former denies to the urgent demands and pressing solicitations of present importunity, that it may reserve its needful bounty for the absent and silent claims of modest and unassuming merit; it punishes with strict severity the guilty criminal, in order that it may protect and avenge those who have, and those who may, fall victims beneath his artful stratagems and wily snares! In sparing the murderer, we forget the devoted object of his unrelenting fury, whose blood calls aloud to heaven for speedy retribution, while we sharpen anew the sanguinary weapon which enables the cruel monster to seek for new sacrifices, and perpetrate fresh crimes! But perhaps, my lord, I shall be reminded that my arguments are inconclusive and my reflections inapplicable on the pre-

sent occasion—I shall be told that in the cases of Bennett and Chapman" (meaning the aforesaid Thomas Bennett and William Chapman) "your lordship really believed the defendants to be innocent, and that the jury were not satisfied nor convinced of their guilt! It will therefore be necessary that I should carefully and impartially examine into the alleged and presumed causes of their acquittal, and enter a little fully into the particulars of the case. With the characteristic freedom of a British subject, permit me to investigate the facts that were adduced, the character and situation of the respective parties, the credibility of the witnesses, your lordship's concluding observations, and the consequent verdict of the jury. It is an awful, a delicate and an important undertaking; for it concerns the life and safety of every individual. Our brave soldiers and seamen are most materially interested in the decision, and all ranks and classes of the community are involved in its fate! A subject of this nature cannot and ought not to be lightly treated, or hastily dismissed, I must therefore trouble your lordship again on these points; and by a brief analysis of facts, and a comparison of the law of evidence, as hitherto established in our public tribunals, with the doctrines recently asserted at the above trials, shall endeavour to show, that if the latter be received and admitted as a rule of practice and a maxim of English jurisprudence, it will, in future, be utterly impossible to produce legal and substantial proofs of guilt, or procure the conviction of a murderer or an assassin; and the most horrible and atrocious crimes may henceforward be wantonly and deliberately perpetrated with impunity and success!—JUNIUS—Jan. 22 1808"—*To the great scandal and disgrace not only of the said sir Simon Le Blanc and of the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid but also of the administration of public justice in England in contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his Crown and dignity.*

3rd Count—And the said attorney general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said John Harriott Hart and Henry White well knowing the premises aforesaid but being such malicious and ill-disposed persons as aforesaid and further unlawfully and maliciously devising and intending as last aforesaid did afterwards to wit on the twenty-fourth day of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully

and maliciously print and publish and cause to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said respective trials and acquittals of the said William Chapman and Thomas Bennett and of and concerning the conduct of the said sir Simon Le Blanc at the said trials and also of and concerning the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid and their verdicts aforesaid containing therein divers scandalous malicious and defamatory matters and things of and concerning the said respective trials and acquittals of the said William Chapman and Thomas Bennett and of and concerning the conduct of the said sir Simon Le Blanc at the said trials and also of and concerning the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid and their verdicts aforesaid according to the tenor and effect following that is to say "To Sir Simon Le Blanc" (meaning the aforesaid sir Simon Le Blanc) "judge of the high court of Admiralty—My lord; The two trials" (meaning the aforesaid trials of the said William Chapman and Thomas Bennett) "that have recently taken place in the court over which you" (meaning the said sir Simon Le Blanc) "preside as one of the judges, have filled the whole country with inexpressible astonishment and alarm; one universal sentiment of horror has prevailed throughout the land and pervaded the bosom of every individual who has perused the inhuman and disgusting detail! The facts that were adduced in open court, and the subsequent verdict of the jury have been received with general surprise and indignation! Two brutal ruffians" (meaning the aforesaid William Chapman and Thomas Bennett) "(for who can otherwise name them?) stand convicted on the best and clearest evidence that could possibly be obtained, viz. that of the whole ship's crew of which these wretches were the captains, of having perpetrated the most foul and malicious murders; and yet, notwithstanding their concurrent testimony, supported by the opinions of eminent medical practitioners, are, after a full and deliberate investigation, acquitted by a British jury!!!—To what cause are we to attribute this excessive tenderness, this criminal moderation and forbearance? I confess, my lord" (meaning the aforesaid sir Simon Le Blanc) "that I scarcely know how to regulate my feelings, or in what appropriate terms to address you upon the subject. My trembling pen drops from my feeble hand! I am overwhelmed with shame and confusion! my

swelling heart throbs within my indignant bosom, grief and resentment alternately depress and agitate my troubled mind, and render me almost incapable of the task I have undertaken. By all the tender ties of mutual sympathy and sacred obligations of eternal justice, in the name of humanity, and for the credit of that country to which you have the honor to belong, I implore your lordship" (meaning the said sir Simon Le Blanc) "to revise those frightful proceedings, and pause upon the fatal verdicts that have passed! Be not deceived, nor 'lay that flattering unction to your soul' that these horrible and atrocious acts will elude the inquiring gaze of public observation, or, like the fleeting breath of idle rumour, pass away hastily noticed and remembered no more! No, my lord, our laws and constitution, the tribunals and jurisprudence of England have received a wound that threatens their destruction. The Magna Charta and Bill of Rights have been almost rendered useless and abolished! The lives and personal safety of individuals have been made the wanton sport of brutal malice; and the chief security and best blessing of our immortal Alfred, the 'trial by jury' has been perverted and destroyed" to the great scandal and disgrace as well of the said sir Simon Le Blanc as of the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid to the great perversion hindrance and obstruction of public justice in contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

4th Count—And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said John Harriott Hart and Henry White well knowing the premises aforesaid but being such malicious and ill-disposed persons as aforesaid and further unlawfully and maliciously devising and intending as last aforesaid did afterwards to wit on the twenty-fourth day of January in the forty-eighth-year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously print and publish and cause to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said respective trials and acquittals of the said William Chapman and Thomas Bennett and of and concerning the conduct of the said sir Simon Le Blanc at the said trials and also of and concerning the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty

as aforesaid and their verdicts aforesaid containing therein divers scandalous malicious and defamatory matters and things of and concerning the said respective trials and acquittals of the said William Chapman and Thomas Bennett and of and concerning the conduct of the said sir Simon Le Blanc at the said trials and also of and concerning the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid and their verdicts aforesaid according to the tenor and effect following (that is to say) "Never did trials more strongly arrest the public attention than those of Bennett and Chapman" (meaning the aforesaid Thomas Bennett and William Chapman), "and never did the verdicts of a jury excite more unequivocal marks of dissatisfaction and disgust! It is not, my lord, that the people of England are either vindictive or cruel, or delight in scenes or spectacles of blood! on the contrary they are humane and generous to a fault. Our statutes are considered as too sanguinary and penal, and the lenity both of the sovereign and the legislature has frequently interposed to soften the excessive severity and rigor of the laws. I am willing to believe that both your lordship and the jury were influenced by the amiable motives of humanity, since no otherwise can I account either for your" (meaning the said sir Simon Le Blanc's) "concluding observations, or their extraordinary verdict; but never, surely, was this godlike attribute exerted upon more mistaken principles, or under less auspicious circumstances. Our celebrated bard has justly observed 'mercy but murders, pardoning those who kill' " to the great scandal and disgrace not only of the said sir Simon Le Blanc and of the jurors of the respective juries by whom the said William Chapman and Thomas Bennett had been so tried and found not guilty as aforesaid but also of the administration of public justice in England. In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

5th Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White well knowing the premises aforesaid but being malicious and ill-disposed persons and unlawfully and maliciously devising and intending to bring the administration of justice and the trial by jury as by law established in England into hatred and contempt among the liege subjects of our said lord the king and to raise and excite disaffection and

discontent in the minds of the liege subjects of our said lord the king and to insinuate and cause it to be believed that the said William Chapman had been unduly wrongfully and improperly acquitted and found not guilty and to traduce defame and vilify the jurors of the said jury by whom the said William Chapman had been so tried and found not guilty as aforesaid and to bring the said jurors of the said jury into public hatred and contempt did afterwards to wit on the twenty-fourth day of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said trial and acquittal of the said William Chapman and of and concerning the conduct of the said jurors of the said jury by whom the said William Chapman had been so tried and found not guilty as aforesaid and their verdict aforesaid according to the tenor and effect following that is to say "To the Gentlemen of the jury at the late trial of captain Chapman," (meaning the said trial of the said William Chapman) "for the wilful murder of Robert Dunn.—Gentlemen" (meaning the jurors of the jury by whom the said William Chapman was so tried, and found not guilty as aforesaid,) "when public indignation is excited at the conduct of an inhuman individual, when the horrid acts of that individual are substantiated by the clearest concurring testimony, the plain steps that a jury have to pursue, is to follow the natural instinct of their hearts and understanding, and by deciding in conformity, they still keep elevated the opinion of the impartial and retributive mode, trial by jury! But when, contrary to all expectation, their decisions give liberty to such inhuman monsters, when they seemingly set at defiance the clamorous calls of justice and humanity, the public indignation, though doubtless unavailing, cannot be altogether overwhelmed by the impetuous torrent of judicial corruption. It is on you, gentlemen" (meaning the jurors of the said jury by whom the said William Chapman was so tried and found not guilty as aforesaid), "at this moment the eyes of thousands are fixed with suspicion; you are called upon aloud to vindicate your unaccountable deviation from the dictates of common reason, and shocked humanity; you are called upon to explain and snatch from reality the more than visionary aspect of approaching tyranny.—If in the impartial summing up of the horrid matter brought forth, you were told to weigh well the improbability

of the evidence; if you were emphatically told to consider, if under all the circumstances, whether the prisoner" (meaning the said William Chapman) "ought not to be entitled to his acquittal" (meaning the aforesaid acquittal of the said William Chapman), "yet still Britons, actuated alone by a thirst for public justice—men appealing to their own hearts for decision, whose very souls might be supposed to be convulsed with gathering indignation, were sworn to decide impartially and without influence.—I am willing to suppose gentlemen" (meaning the jurors of the said jury by whom the said William Chapman was so tried and found not guilty as aforesaid) "that you are possessed of common capacities, and as being Englishmen of hearts flowing with commiseration and humanity; it required no imbibed knowledge to form a decision in this case,—the circumstances flashed conviction to the mind of the meanest individual! Good God! what then instigated you? Let the public know your motives, and wipe away that otherwise irretrievable stigma, which you have attached to your own names, and to the distributive justice of our country. If when the agonizing groans of the tortured victim congealed the blood flowing round the shocked heart of every beholder—if at spectacles so horrid even the savage African could weep—the very souls of a humane British jury ought to have melted into more than individual commiseration; their just verdict ought to have instantly expunged from nature the culprit whose acts render him immortally inhuman. If when the victim's soul was ready to quit its lacerated boundary, a solitary consolation could have invigorated its flight, it was, that retribution would overtake the monster—that the propitious breeze which wafted to his native land the heart-rending tale, would secure to his departed soul vengeance and repose. To you, gentlemen, with his last departed groan he committed (while hope cast a momentary smile upon his visage) his individual cause, and the cause of humanity! I appeal then to a discerning public, even to your own hearts will I appeal, whether you" (meaning the jurors of the said jury by whom the said William Chapman was so tried and found not guilty as aforesaid) "have done your duty" (meaning duty at the aforesaid trial of the said William Chapman) "as Englishmen! as jurymen! I here pause—I fancy I see the blush of conscious error and unworthiness overspread your cheeks! Do then, I conjure you, if you value your reputations, if you wish the public to believe that you acted un-

fluenced, give one solitary reason why, with a unanimous voice, you did not pronounce the merited word Guilty! Guilty! T. C.—St. Swithin's-lane—January 18, 1808."—*To the great scandal and disgrace of the jurors of the said jury by whom the said William Chapman was so tried and found not guilty as aforesaid and of the administration of justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

6th Count—And the said attorney-general of our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White well knowing the premises last aforesaid but being malicious and ill-disposed persons and unlawfully and maliciously *devising and intending as last aforesaid did afterwards to wit on the twenty-fourth day of January* in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel *of and concerning the said trial and acquittal of the said William Chapman and of and concerning the conduct of the said jurors of the said jury by whom the said William Chapman had been so tried and found not guilty as aforesaid and their verdict aforesaid containing therein among other things certain other scandalous malicious and defamatory matters and things of and concerning the said trial and acquittal of the said William Chapman and of and concerning the conduct of the said jurors of the said jury by whom the said William Chapman had been so tried and found not guilty as aforesaid and their verdict aforesaid* according to the tenor and effect following that is to say "To the Gentlemen of the Jury at the late trial of captain Chapman" (meaning the aforesaid trial of the said William Chapman) "for the wilful murder of Robert Dunn—Gentlemen;" (meaning the jurors of the jury by whom the said William Chapman was so tried and found not guilty as aforesaid) "When public indignation is excited at the conduct of an inhuman individual, when the horrid acts of that individual are substantiated by the clearest concurring testimony, the plain steps that a jury have to pursue is to follow the natural instinct of their hearts and understanding; and by deciding in conformity, they still keep elevated the opinion of the impartial and retributive mode, trial by jury! But when, contrary to all expectation, their decisions give liberty to such inhuman

monsters, when they seemingly set at defiance the clamorous calls of justice and humanity, the public indignation, though doubtless unavailing, cannot be altogether overwhelmed by the impetuous torrent of judicial corruption. It is on you, gentlemen" (meaning the jurors of the said jury by whom the said William Chapman was so tried and found not guilty as aforesaid), "at this moment the eyes of thousands are fixed with suspicion; you are called upon aloud to vindicate your unaccountable deviation from the dictates of common reason and shocked humanity. You are called upon to explain and snatch from reality the more than visionary aspect of approaching tyranny. If, in the impartial summing up of the horrid matter brought forth, you were told to weigh well the improbability of the evidence; if you were emphatically told to consider, if under all the circumstances, whether the prisoner" (meaning the said William Chapman) "ought not to be entitled to his acquittal" (meaning his acquittal at the aforesaid trial) "yet still Britons, actuated alone by a thirst for public justice, men appealing to their own hearts for decision, whose very souls might be supposed to be convulsed with gathering indignation, were sworn to decide impartially and without influence. I am willing to suppose, gentlemen" (meaning the jurors of the aforesaid jury by whom the said William Chapman was so tried and found not guilty as aforesaid) "that you are possessed of common capacities, and as being Englishmen, of hearts flowing with commiseration and humanity. It required no imbibed knowledge to form a decision in this case. The circumstances flashed conviction to the mind of the meanest individual. Good God! what then instigated you? Let the public know your motives, and wipe away that otherwise irretrievable stigma which you have attached to your own names and to the distributive justice of our country"—*To the great scandal and disgrace of the jurors of the said jury by whom the said William Chapman was so tried and found not guilty as aforesaid and of the administration of public justice in England* In contempt of our said lord the king and his laws To the evil example of all others and against the peace of our said lord the king his crown and dignity.

7th Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White being such malicious and ill-disposed persons as aforesaid and again unlawfully and maliciously devising

and intending to bring the administration of justice and the trial by jury as by law established in England into hatred and contempt among the liege subjects of our said lord the king and to raise and excite disaffection and discontent in the minds of the liege subjects of our said lord the king heretofore to wit on the seventeenth day of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel of and concerning certain supposed trials of certain persons in and by the said last-mentioned libel surmised and alleged to have been then lately tried for the crime of murder at the Old Bailey and of and concerning the verdicts thereupon supposed to have been given according to the tenor and effect following that is to say "To the Editor of the Independent Whig.—Sir; The professions you invariably make to the public as editor of the Whig, as well as under the signature of Crito, will, I hope, animate your pen on the subject of the late trial for three murders at the Old Bailey!!! The former one" (meaning one of the said last-mentioned supposed trials) "for the cruel systematic, gradual torturing to death a poor sick boy was bad enough, God knows; but the last" (meaning the last of the said last-mentioned supposed trials) "eclipses every thing before recorded. Henceforth away with the hitherto popular foolish Erskinean boast of "trial by jury;" for the sake of injured humanity, let us have no more of these boasts. It is reported that Mr. Deputy Thomas Loveland, of Aldersgate-street, baker, has the merit, upon this occasion, of having chiefly contributed to prevail upon the rest of the jury to pronounce the verdict of acquittal" (meaning the verdict of acquittal at the said last-mentioned supposed trials) "which has astonished every individual. Your language is mostly nervous, strong, and forcibly energetic; pray, for the sake of injured justice, exert it on this occasion with full force, and the effect will be great! Yours, in integrity—HUMANITAS. January 13th, 1808"—*To the great scandal and disgrace of the administration of public justice in England* In contempt of our said lord the king and his laws To the evil example of all others and against the peace of our said lord the king his crown and dignity.

8th Count—And the said attorney-general of our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White being such malicious and ill-disposed persons as aforesaid

and again unlawfully and maliciously devising and intending to bring the administration of justice and the trial by jury as by law established in England into hatred and contempt among the liege subjects of our said lord the king and to raise and excite disaffection and discontent in the minds of the liege subjects of our said lord the king and to traduce defame and vilify the said sir Simon Le Blanc and to bring them into public hatred and contempt heretofore to wit on the twenty-fourth day of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous and malicious libel of and concerning certain other supposed trials of certain persons in and by the said last-mentioned libel surmised and alleged to have been then lately tried for the crime of murder and at which said supposed trials it is in and by the said last-mentioned libel surmised and alleged that the said sir Simon Le Blanc presided as one of the judges containing therein divers scandalous and malicious matters and things of and concerning the said supposed trials and the verdicts thereupon supposed to have been given and the conduct and behaviour of the said sir Simon Le Blanc presiding as one of the judges at the said supposed trials according to the tenor and effect following that is to say "To Sir Simon Le Blanc" (meaning the aforesaid sir Simon Le Blanc) "Judge of the High Court of Admiralty.—My Lord" (meaning the aforesaid sir Simon Le Blanc) "The two trials" (meaning the said last-mentioned supposed trials) "that have recently taken place in the court over which you" (meaning the said sir Simon Le Blanc) "preside as one of the judges, have filled the whole country with inexpressible astonishment and alarm! One universal sentiment of horror has prevailed throughout the land, and pervaded the bosom of every individual who has perused the inhuman and disgusting detail! The facts that were adduced in open court, and the subsequent verdict of the jury have been received with general surprise and indignation! Two brutal ruffians (for who can otherwise name them) stand convicted on the best and clearest evidence that could possibly be obtained, viz. that of the whole ship's crew of which these wretches were the captains, of having perpetrated the most foul and malicious murders; and yet, notwithstanding their concurrent testimony, supported by the opinions of eminent medical practitioners, are, after a full and deliberate investigation, acquitted by a British jury!!! To what cause are we to attribute this excessive tender-

ness—this criminal moderation and forbearance? I confess, my lord, that I scarcely know how to regulate my feelings, or in what appropriate terms to address you upon the subject. My trembling pen drops from my feeble hand—I am overwhelmed with shame and confusion! My swelling heart throbs within my indignant bosom! Grief and resentment alternately depress and agitate my troubled mind, and render me almost incapable of the task I have undertaken! By all the tender ties of mutual sympathy and sacred obligations of eternal justice, in the name of humanity, and for the credit of that country to which you" (meaning the said sir Simon Le Blanc) "have the honour to belong, I implore your lordship" (meaning the said sir Simon Le Blanc) "to revise those frightful proceedings, and pause upon the fatal verdicts that have passed! Be not deceived, nor 'lay that flattering unction to your soul,' that these horrible and atrocious acts will elude the inquiring gaze of public observation, or, like the fleeting breath of idle rumour, pass away hastily noticed and remembered no more! No, my lord—our laws and constitution—the tribunals and jurisprudence of England, have received a wound that threatens their destruction. The Magna Charta and Bill of Rights have been almost rendered useless and abolished; the lives and personal safety of individuals have been made the wanton sport of brutal malice; and the chief security and best blessing of our immortal Alfred, the "Trial by Jury" has been perverted and destroyed! In offering these animadversions to your lordship's serious and solemn attention, you cannot—nay you dare not—falsely or foolishly believe, that I am merely echoing the clamorous war-whoop of faction or sounding the dismal tocsin of ill-founded and unjust alarm! Heavens! that we should live in such degenerate days, when freely to investigate the character and conduct of our constituted authorities should be accounted blasphemous, or that to plead the cause of injured and insulted human nature should involve the pains and penalties of disaffection and treason! Is mercy, then, with Englishmen become a crime? Shall pity's soft emotions be restrained, or the defenceless murdered victims of oppression pass to the silent tomb without remonstrance or redress? Forbid it Heaven! while truth and honesty are yet accounted virtues—while liberty, humanity and justice still prevail, and piety remains a willing guest among us—the murderer, the tyrant, the plunderer, and the oppressor shall be upheld to public view—bear Cain's accursed

stamp upon their guilty brow, and be consigned to everlasting infamy and shame! What were your lordship's" (meaning the said sir Simon Le Blanc's) "sensations, or those of your professional brethren, upon hearing the evidence of these unexampled and atrocious acts of cruelty? or what might be the tokens of the surprise and disappointment that were painted upon the altered countenances of the anxious crowd that were assembled on receiving the extraordinary and unexpected verdict of the jury, as I did not witness them I cannot tell! It is the report alone that has reached me, and which I have perused with the most poignant feelings of anguish and horror! Scarcely could I endure the dreadful recital! Had I been present when the acquittal of these monsters were proclaimed, with all my respect for the tribunals of my country, or deference to the verdict of the jury, I fear the impulse of nature would have prevailed over the timid suggestions of prudence. I should have disturbed "stern Justice" slumbering on her mercy-seat, and transgressed the rigid boundaries of decorum! Never did trials more strongly arrest the public attention than those of Bennett and Chapman" (meaning the aforesaid last-mentioned supposed trials) "and never did the verdicts of a jury excite more unequivocal marks of dissatisfaction and disgust! It is not, my lord, that the people of England are either vindictive or cruel, or delight in scenes or spectacles of blood! On the contrary, they are humane and generous to a fault. Our statutes are considered as too sanguinary and penal, and the lenity both of the sovereign and the legislature has frequently interposed to soften the excessive severity and rigor of the laws. I am willing to believe, that both your lordship and the jury were influenced by the amiable motives of humanity, since no otherwise can I account either for your" (meaning the said sir Simon Le Blanc's) "concluding observations, or their extraordinary verdict! But, never surely was this god-like attribute exerted upon more mistaken principles, or under less suspicious circumstances! Our celebrated bard has justly observed, "mercy but murders, pardoning those who kill!" And if the punishment of the murderer was intended to operate as an effectual restraint, and a salutary example to protect innocence, and deter the wicked from the perpetration of a similar offence; to suffer the guilty individual, not only to escape with impunity, but even to be recorded as justified, and absolved from all recrimination or censure, is certainly to encourage the repetition and increase the enormity of the

crime. There is a genuine, and there is a spurious humanity, which are frequently confounded and intermingled, but which nevertheless are distinct and separate in their nature. The former denies to the urgent demands and pressing solicitations of present importunity, that it may reserve its needful bounty for the absent and silent claims of modest and unassuming merit. It punishes with strict severity the guilty criminal, in order that it may protect and avenge those who have, and those who may fall victims beneath his artful stratagems, and wily snares! In sparing the murderer, we forget the devoted object of his unrelenting fury, whose blood calls aloud to Heaven for speedy retribution, while we sharpen anew the sanguinary weapon, which enables the cruel monster to seek for new sacrifices, and perpetrate fresh crimes! But perhaps, my lord, I shall be reminded that my arguments are inconclusive, and my reflections inapplicable on the present occasion. I shall be told, that in the cases of Bennett and Chapman" (meaning the cases of the said last-mentioned supposed trials), "your lordship really believed the defendants to be innocent, and that the jury were not satisfied, nor convinced of their guilt! It will, therefore, be necessary that I should carefully and impartially examine into the alleged and presumed causes of their acquittal, and enter a little fully into the particulars of the case. With the characteristic freedom of a British subject, permit me to investigate the facts that were adduced, the character and situation of the respective parties, the credibility of the witnesses, your lordship's concluding observations, and the consequent verdict of the jury. It is an awful, a delicate, and an important undertaking, for it concerns the life and safety of every individual; our brave soldiers and seamen are most materially interested in the decision, and all ranks and classes of the community are involved in its fate! A subject of this nature cannot and ought not to be lightly treated, or hastily dismissed; I must, therefore, trouble your lordship again on these points, and by a brief analysis of the facts, and a comparison of the law of evidence, as hitherto established in our public tribunals, with the doctrines recently asserted at the above trials" (meaning the said last-mentioned supposed trials), "shall endeavour to show, that if the latter be received and admitted as a rule of practice, and a maxim of English jurisprudence, it will in future be utterly impossible to produce legal and substantial proofs of guilt, or procure the conviction of a murderer or an assassin;

and the most horrible and atrocious crimes may henceforward be wantonly and deliberately perpetrated, with impunity and success! JUNIUS—January 22nd, 1808.—” *To the great scandal and disgrace not only of the said sir Simon Le Blanc but also of the administration of public justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

9th Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White so being such malicious and ill-disposed persons as aforesaid and further unlawfully and maliciously devising and intending *as last aforesaid did afterwards to wit on the twenty-fourth day of January* in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously print and publish and cause to be printed and published a certain other scandalous and malicious libel *of and concerning certain other supposed trials of certain persons in and by the said last-mentioned libel surmised and alleged to have been then lately tried for the crime of murder and at which said last-mentioned supposed trials it is in and by the said last-mentioned libel surmised and alleged that the said sir Simon Le Blanc presided as one of the judges containing therein among other things divers scandalous and malicious matters and things of and concerning the said last-mentioned supposed trials and the verdicts thereupon supposed to have been given and the conduct and behaviour of the said sir Simon Le Blanc presiding as one of the judges at the said last-mentioned supposed trials according to the tenor and effect following that is to say “To Sir Simon Le Blanc” (meaning the aforesaid sir Simon Le Blanc), “judge of the High Court of Admiralty.—My Lord; The two trials” (meaning the said last-mentioned supposed trials), “that have recently taken place in the Court over which you” (meaning the said sir Simon Le Blanc) “preside as one of the judges, have filled the whole country with inexpressible astonishment and alarm! One universal sentiment of horror has prevailed throughout the land, and pervaded the bosom of every individual who has perused the inhuman and disgusting detail! The facts that were adduced in open court, and the subsequent verdict of the jury, have been received with general surprise and indignation! Two brutal ruffians (for who can otherwise name them) stand convicted on the best and clearest evidence that could*

possibly be obtained, viz. that of the whole ship’s crew of which these wretches were the captains, of having perpetrated the most foul and malicious murders; and yet, notwithstanding their concurrent testimony, supported by the opinions of eminent medical practitioners, are, after a full and deliberate investigation, acquitted by a British Jury!!! To what cause are we to attribute this excessive tenderness, this criminal moderation and forbearance? I confess, my lord, that I scarcely know how to regulate my feelings, or in what appropriate terms to address you upon the subject! my trembling pen drops from my feeble hand! I am overwhelmed with shame and confusion! my swelling heart throbs within my indignant bosom! Grief and resentment alternately depress and agitate my troubled mind, and render me almost incapable of the task I have undertaken! By all the tender ties of mutual sympathy, and sacred obligations of eternal justice, in the name of humanity, and for the credit of that country to which you” (meaning the said sir Simon Le Blanc) “have the honour to belong, I implore your lordship” (meaning the said sir Simon Le Blanc) “to revise those frightful proceedings and pause upon the fatal verdicts that have passed! Be not deceived, nor ‘lay that flattering unction to your soul’ that these horrible and atrocious acts will elude the inquiring gaze of public observation, or, like the fleeting breath of idle rumour, pass away hastily noticed and remembered no more! No, my lord, our laws and constitution, the tribunals and jurisprudence of England, have received a wound that threatens their destruction! The Magna Charta and Bill of Rights, have been almost rendered useless and abolished. The lives and personal safety of individuals have been made the wanton sport of brutal malice; and the chief security and best blessing of our immortal Alfred, the “Trial by Jury,” has been perverted and destroyed! *To the great scandal and disgrace of the said sir Simon Le Blanc and of the administration of public justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

10th Count—And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said John Harriott Hart and Henry White so being such malicious and ill-disposed persons as aforesaid and further unlawfully and maliciously devising and intending *as last aforesaid did afterwards to wit on the twenty-fourth day*

of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously print and publish and cause to be printed and published a certain other scandalous and malicious libel of and concerning certain other supposed trials of certain persons in and by the said last-mentioned libel surmised and alleged to have been then lately tried for the crime of murder and at which said last-mentioned supposed trials it is in and by the said last-mentioned libel surmised and alleged that the said sir Simon Le Blanc presided as one of the judges containing therein among other things divers scandalous and malicious matters and things of and concerning the said last-mentioned supposed trials and the verdicts thereupon supposed to have been given and the conduct and behaviour of the said sir Simon Le Blanc presiding as one of the judges at the said last-mentioned supposed trials according to the tenor and effect following (that is to say), "Never did trials more strongly arrest the public attention than those of Bennett and Chapman" (meaning the aforesaid last-mentioned supposed trials), "and never did the verdicts of a jury excite more unequivocal marks of dissatisfaction and disgust! It is not, my lord, that the people of England are either vindictive or cruel, or delight in scenes or spectacles of blood! On the contrary, they are humane and generous to a fault. Our statutes are considered as too sanguinary and penal, and the lenity, both of the sovereign and the legislature, has frequently interposed to soften the excessive severity and rigour of the laws. I am willing to believe, that both your lordship and the jury were influenced by the amiable motives of humanity, since no otherwise can I account either for your" (meaning the said sir Simon Le Blanc's) "concluding observations, or their extraordinary verdict! But never, surely, was this god-like attribute exerted upon more mistaken principles, or under less auspicious circumstances! Our celebrated bard has justly observed, 'mercy but murders, pardoning those who kill!'" To the great scandal and disgrace of the said sir Simon Le Blanc and of the administration of public justice in England in contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity Whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against them the said John Harriott Hart and Henry White in

this behalf to make them answer to our said lord the king touching and concerning the premises aforesaid.

Mr. Attorney-general [Sir V. Gibbs, afterwards Lord Chief Justice of the Common Pleas.]

Gentlemen of the Jury;

The defendant John Harriott Hart is the printer, and the defendant Henry White is the sole proprietor, of a paper, called the Independent Whig, which you have probably seen.—I have felt it my duty to file this information for certain libels published in that paper, the tendency and express object of which is to bring the administration of justice into contempt and disgrace, by vilifying and defaming the characters of those to whom the constitution of the country has committed the administration of the laws:—namely, the judge who presides, and the jury who decide on the cases brought before them.—It is not difficult to foresee what would be the consequence of effecting that object.—If an opinion can be disseminated in the minds of men, and they can be brought to think, that the laws are corruptly administered by the Court, and that improper directions are given by the Bench to the Jury, whose duty it is to return their verdict on the facts before them; it is obvious that the consequence must be, that the laws will be despised and contemned, and, being despised and contemned, will be daily violated.—What is to be placed in their stead,—whose will is to be set up in the place of the laws by which we have been hitherto governed,—I know not;—but I know that the tendency of such libels as these is, to produce the effect I have stated.

The person whom these libellers have selected as the object of their slander is a learned judge, whose conduct would have protected him from such attacks if it had been possible that the conduct of the most learned, discreet, humane, upright, and attentive, magistrate could have guarded against them.—The person I mean is Mr. Justice Le Blanc—and those who have witnessed the manner in which he, so much to his own honour and to the benefit of the public, fulfills the duties of his high office—those who have observed the patient diligence with which he points out to the jury the facts bearing on either side of the cases brought before him—those who have witnessed the learning with which he states and discusses all points of law—those who have observed the even hand with which he holds the balance of justice in all cases brought under his consideration—those who have observed and know all this, cannot but be filled with surprise to find that he has been selected as the object of such an atrocious libel.

Gentlemen, in order to render these libels intelligible to you, it is necessary that I should give you some account of two cases

that were tried at the Old Bailey; at one of which sir Simon Le Blanc did preside, and at the other of which he is falsely supposed to have presided; and for his conduct at the one and his supposed conduct at the other of which trials, he is made the subject of these libels.—One of these trials was at the Admiralty sessions, in December, 1807; and the other in the month of January, in the present year. A man named Thomas Bennett, the captain of a slave ship, was indicted for the murder (I beg pardon, I stated that he was master of a slave-ship, I was wrong, he was the master of a common merchant vessel) of a boy named William Rickman. Undoubtedly, he had treated that boy harshly; but all the medical people who gave evidence with respect to the boy's death, and who had heard the facts detailed,—medical persons, who were called, not by the prisoner in his defence, but on the part of the prosecution, in order to show that the boy did die in consequence of the treatment he had received,—concurred in stating, that the treatment he had received could not have occasioned his death, but that he died of some natural defect in his frame, some malady affecting the heart by which its functions were impeded.

Under these circumstances, the case was left to the jury; and the question submitted to them was, whether the boy did or did not die from the usage he had received.—It was left to the jury, not by Mr. Justice Le Blanc, for he was not the judge who summed up the evidence, but by the lord chief Baron, and the jury were of opinion that the boy did not die of the cause to which his death had been attributed,—namely, the ill treatment he had received; but that he died in consequence of a natural infirmity;—and they did that, which if they had not done they would have disgraced themselves,—they found the defendant not guilty of having murdered the boy, who, they said, did not die of the ill treatment he had received.

Another case afterwards came on, that of William Chapman,* the captain of a slave-ship;—he had with him on board a young man of the name of Robert Dunn, and he had with him likewise a crew, who, on the Coast of Africa, mutinied, left his ship, and conducted themselves in a most reprehensible manner.—On board that ship was a doctor who was bound by his duty to render an account of the mortality of the crew and slaves, at the first place at which he arrived in the West Indies. The voyage was performed to Africa, where this conduct of the crew took place, by which they forfeited their wages; the captain then proceeded to the West Indies, and landed at Dominica; he then proceeded to Montserrat, and thence his destination was home. At Montserrat complaint

was made against him, that he had murdered a considerable number of his crew, one of whom was Robert Dunn. The doctor was the main accuser; other seamen joined in the accusation; he was taken into custody, and sent home for trial; and at the Admiralty-sessions he was tried on the evidence of the doctor, and of those men who were accomplices in the mutiny in which the doctor had been concerned:—I should, however, observe, that the captain had been driven more than once to inflict corporal punishment upon this doctor (not a very usual thing with respect to persons in his situation on board ship), and which would not have been done without extreme necessity;—the doctor and his associates gave evidence of such treatment of the boy as perhaps would have been sufficient to produce death; and, if they had been believed, there was no doubt that Chapman ought to have been found guilty. But against this, there was the fact of the doctor having given in at Dominica an account of the state of the crew, in which he stated Dunn to have died on the voyage of a natural disorder; in which he stated that he had attended him, and in which he also stated the manner in which he had treated him under that disorder. It was in proof, likewise, that a conversation had passed between the doctor and some of the mutinous crew to this effect: "Stick to that—let us all be in one story, and our wages will be safe."—It was in evidence, likewise, that in the interval between the doctor having given his account (in which he stated that the boy had died a natural death) and his arrival at Montserrat, he had had a fresh quarrel with the captain, had sworn he would be revenged, and declared that he had given him enough: meaning, I suppose, for some correction the captain had inflicted on him.

All the witnesses against the prisoner had been involved in this transaction. The learned judge who tried the case,—and whose great learning is only to be equalled by the distinctness with which he puts to the jury circumstances that ought to have weight on either side, and by the humanity tempered with firmness and a respect for the laws with which he always tries (and with which every British judge I trust ever will try) a prisoner for a crime which affects his life,—stated to the jury these circumstances. He told them that if they believed the witnesses, the effect of their testimony was, to fix upon the prisoner the crime of murder; but he also stated to them, (and he would have been the monster he is described, if he had not done so) the character and conduct of the witnesses;—he stated what had been the conduct of the doctor; he stated the conversation proved to have passed, and upon the whole he left it to the jury to say, whether, under these circumstances, they did, or did not, give credit to the witnesses:—if they did give credit to them, he told them to find the prisoner guilty; on the other hand,

* An account of this case will be found in the New Ann. Reg. for the year 1808,—Principal Occurrences, p. 13.

if they could not proceed on safe grounds in giving credit to these witnesses against a man charged with a crime that went to affect his life, it would be their duty to acquit the prisoner. The jury considered of the evidence, and, after some time and reflection, brought in a verdict of not guilty.

I think if I were to depict propriety of conduct in a judge—if I were to describe an object of imitation for one in whose character I was most deeply interested, and by the imitation of which I wished he should recommend himself to public esteem, I should draw my example from the conduct of this learned judge on the occasion to which I allude. He did not shrink from the duty imposed on him—he did not fail to state to the jury, that if they believed these witnesses, if they conceived they had ground to rely on their testimony, the prisoner was guilty; but he also did that, which it was his duty as an impartial judge to do, he pointed out the facts proved as to these witnesses; he represented what the evidence was that affected their testimony; he did not himself decide what credit was due to them, but left it to that jury, to which the constitution of the country had entrusted it.

These facts having been sworn to, and the jury having been informed from the bench that the prisoner was guilty if the evidence was believed, the learned judge left it to the jury to say whether, upon such testimony, they did or did not believe the facts. The jury were of opinion, that they could not consign a man to death upon the evidence of such suspicious witnesses.

Gentlemen, I did not myself attend the trial, but it was attended by a learned friend of mine, the solicitor-general who prosecuted for the crown; and I know he was perfectly satisfied with the verdict of the jury.—Under these circumstances, and for this conduct which I have correctly stated to you, we find that the printer and the publisher of this newspaper, the Independent Whig, have thought fit to utter the most scandalous and atrocious libels upon the conduct, not only of the learned judge who summed up the evidence, but also of the jury who tried and acquitted the prisoner.

The first of these libels which it will be my business to state to you, is directed against the jury. You will observe that one of the trials took place in the month of December 1807, and the other took place in the January following. On the 17th of January this paragraph appears;—it is only one of the libels found in the paper of which I complain:—“To the editor of the Independent Whig.—Sir;—The professions you invariably make to the public, as editor of the Whig, as well as under the signature of Crito, will, I hope, animate your pen on the subject of the late trials for three murders; the former one for the cruel, systematic, gradual, torturing to death, a poor sick boy.”—Now that was the

trial of Bennett for the murder of Rickman, with respect to whom, I have stated to you, that all the medical persons, who were called for the purpose of proving that he died of the treatment he received, concurred in stating that he did not die of that treatment.—The libel then goes on, “But the last eclipses every thing before-recorded. Henceforth away with the hitherto popular foolish Erskinean boast of trial by jury;—for the sake of injured humanity let us have no more of these boasts.”—So far as to the general attack upon the jury who acquitted this prisoner.—But that is not enough—one of the jury is afterwards held up to the public detestation by these libellers as the person who occasioned this verdict. “It is reported that Mr. Deputy Thomas Loveland, of Aldersgate-street, baker, has the merit, upon this occasion, of having chiefly contributed to prevail upon the rest of the jury to pronounce the verdict of acquittal which has astonished every individual. Your language is mostly nervous, strong, and forcibly energetic; pray, for the sake of injured justice, exert it on this occasion with full force, and the effect will be great.—Your’s in integrity, HUMANITAS.—Jan. 13th, 1808.”

Gentlemen, I have seen inflammatory publications against jurors, who brought in severe verdicts—the humanity of the people of this country leads them sometimes to complain of the severity even of justice itself; but it was reserved for the authors of this paper to utter such scandalous and atrocious libels against a jury, who, pursuing the dictates of their consciences and believing that, in a case which affected the life of a fellow-subject, they could not send him to an ignominious death upon such evidence as I have described—I say it was reserved for these libellers to make this attack upon them, and to reproach them for their humanity. You will perhaps say, “no one will believe this libel;” we, who heard this trial—we who know how the jury conducted themselves—we, who were witnesses to the disgraceful conduct of those who gave evidence for the prosecution—say, “where is the evil of all this? Who will believe it? No one, surely.”—But, gentlemen, unfortunately, all who read the libel were not present, and therefore cannot bear testimony to its falsehood. My charge is, that these libellers have first misrepresented the conduct of the jury, and have then abused them for that which is the effect of their own misrepresentation. Do you think that a jury can ever be prevailed upon to do that which is so indispensably necessary for the public advantage, if their conduct is to be arraigned publicly in this manner by every person who shall choose to be dissatisfied with their verdict, or who, for some private collateral reason of his own, shall assume an authority to misrepresent the grounds upon which they proceed?—What is it that has supported us on the elevated situation on which we stand?—

What is it that secures the lives, liberties, and property of the people of this country?—What, but the general respect which is paid to the law, and the general sense which prevails of the purity of the administration of justice?—And can you think that that opinion can any longer be preserved?—Can you think that the character of juries will continue to be contemplated as it has been?—Can you think that they will be supported in that strict performance of their duty, which has hitherto distinguished them—if every person who chooses to raise his voice against a verdict pronounced on the best principles, may with impunity send to the remotest part of the kingdom such libels as these?—It seems to me that the object of such publications is, to terrify juries and to render them fearful of the consequences of the verdicts they may give—to render them apprehensive lest they may give displeasure to the editor of a newspaper, and subject themselves to his future libellous animadversions.

It is by publications of this sort that such persons as the defendants hope to keep juries in check; and by these means, to become the arbiters of those cases which ought to be decided by juries alone, according to the operation of their own unbiassed judgments. They wish to create in the minds of jurors a fear of the reproach which may afterwards be cast upon them by these papers so disseminated; and (by the fear of that reproach, arising in their minds at a time when they ought to be weighing the merits of the particular case before them) to force them to consider how their verdict will be spoken of in the next publication of the Independent Whig. It is for you to say whether the administration of justice is likely to be promoted by suffering such conduct to pass with impunity.

I have stated to you one of these libels; I now proceed to state to you another, which I find in the same paper. The next libel is addressed, not to the jury, but to sir Simon le Blanc; and I have already said, and I again repeat, that the object of the publication was, not only to bring the jury who decided, but the learned judge who presided, into contempt and disgrace. The libel I am now about to read was published in another paper on the 24th of January, 1808. It is in these terms,—“To Sir Simon le Blanc, judge of the high court of Admiralty.—My lord;—The two trials that have recently taken place in the Court over which you preside, have filled the whole country with inexpressible astonishment and alarm! One universal sentiment of horror has prevailed throughout the land, and pervaded the bosom of every individual who has perused the inhuman and disgusting detail. The facts that were adduced in open court, and the subsequent verdict of the jury, have been received with general surprise and indignation! Two brutal ruffians stand convicted, on the best and clearest evidence that could possibly be obtained, viz. that of the whole

ship's crew of which these wretches were the captains, of having perpetrated the most foul and malicious murders; and yet, notwithstanding their concurrent testimony, supported by the opinion of eminent medical practitioners, are, after a full and deliberate investigation, acquitted by a British jury!!!”—Now let me pause for a moment, and make one or two observations on this paragraph, and then let me ask you, whether the man who uttered this libel could have had any other object than that of pulling down the whole administration of justice, as it exists in this country.

I have stated the circumstances of this trial:—I have stated that it was because the jury could not prevail upon themselves to give credit to the witnesses, that the acquittal took place; and yet the man who writes this libel states that it was proved, beyond all possibility of doubt, that the prisoner was guilty of murder; whereas the jury did not find that he was guilty of murder. And it is also stated that his guilt was proved by unexceptionable witnesses, when at the same time it was on account of the exceptionability of those witnesses that the jury acquitted the prisoner. Not a word is intimated in this libel, of the circumstances which led to the acquittal of the prisoner; not a word is said of the doubt cast on the characters of the witnesses;—not a word of the concurrent testimony of the medical persons who swore that the man did not die of the treatment he received:—this libeller only so far adverts to it as is necessary for his purpose, lest it should suggest itself to the mind of the reader that the death of the party did not arise from the cause to which it was attributed. He goes on to state, “and yet, notwithstanding their concurrent testimony, supported by the opinion of eminent medical practitioners, they are, after a full and deliberate investigation, acquitted by a British jury.”—Now, with respect to the first case, the evidence of these eminent practitioners was, that the man did not die of the treatment he had received; and, in the second case, the jury could not rely on the testimony of the witnesses. Is it possible to conceive a more false and malignant libel than the passage which I have read to you, both against the learned judge who directed the jury, and the jury who, in pursuance of his directions, properly acquitted the prisoner?

But let me proceed. The libel goes on, “To what cause are we to attribute this excessive tenderness—this criminal moderation and forbearance?—I confess, my lord, I scarcely know how to regulate my feelings, or in what appropriate terms to address you upon the subject—my trembling pen drops from my feeble hand—I am overwhelmed with shame and confusion—my swelling heart throbs within my indignant bosom—grief and resentment alternately depress and agitate my troubled mind, and render me almost incapable of the task I have undertaken.—By all the tender ties of mutual sympathy and sa-

cred obligations of eternal justice, in the name of humanity, and for the sake of that country, to which you have the honour to belong—I implore your lordship to revise those frightful proceedings, and pause upon the fatal verdicts that have passed.”—Here is a piece of advice to his lordship, and then he goes on, “Be not deceived, nor lay that flattering unction to your soul, that these horrible and atrocious acts will elude the inquiring gaze of public observation, or, like the fleeting breath of idle rumour, pass away hastily noticed and remembered no more! No, my lord; our laws and constitution, the tribunals and jurisprudence of England, have received a wound that threatens their destruction! The Magna Charta and Bill of Rights have been almost rendered useless and abolished. The lives and personal safety of individuals have been made the wanton sport of brutal malice, and the chief security and best blessing of our immortal Alfred—the trial by jury—has been perverted and destroyed.”—Is it to be borne that after a jury has gone through the painful duty of considering the circumstances of so distressing a case as this must have been—after they have been instructed by one of the ablest judges of the land—after they have returned their verdict according to the dictates of their consciences—is it, I say, to be borne—is it fitting that they should be held forth to the public as men who have perjured themselves?—as men, who have betrayed the trust the constitution has reposed in them?—as men who have surrendered every thing valuable and worth preserving to the people of England?

Gentlemen, I cannot argue before you the question whether this paper is a libel. If you yourselves do not at once feel that it contains the most disgraceful reproaches against the judge and the jury, it is impossible that any arguments of mine can lead you to that conclusion—the mere statement must be sufficient to convince you.

He then says (in fact, there are not two sentences that do not contain a libel) “Never did trials more strongly arrest the public attention than those of Bennett and Chapman, and never did the verdicts of a jury excite more unequivocal marks of dissatisfaction and disgust.” “I am willing to believe that both your lordship and the jury were influenced by the amiable motives of humanity, since no otherwise can I account either for *your* concluding observations, or *their* extraordinary verdict. But never, surely, was this godlike attribute exerted upon more mistaken principles, or under less auspicious circumstances. Our celebrated bard has justly observed, ‘mercy but murders, pardoning those who kill.’ And, if the punishment of the murderer was intended to operate as an effectual restraint, and a salutary example to protect innocence and deter the wicked from the perpetration of a similar offence—to suffer the guilty individual not only to escape with im-

punity, but even to be recorded as justified and absolved from all recrimination and censure, is certainly to encourage the repetition, and increase the enormity, of the crime.”

You will observe, gentlemen, that this man assumes it as a fact, that these persons were guilty of the murders; that not only the judges before whom they were tried, but the juries were satisfied that they were guilty of murder; and upon that ground he arraigns the verdict which suffered them to go free. It appears to me, that it is impossible for language to convey any thing more destructive to the security which we derive from the unbiassed conduct of juries, acting as they have always hitherto done, than the publication of such a libel as this is.

He goes on and says, “I shall be told, that in the cases of Bennett and Chapman, your lordship really believed the defendants to be innocent, and that the jury were not satisfied nor convinced of their guilt.” I shall be told so!—Now mark his answer—“It will therefore be necessary, that I should carefully and impartially examine into the alleged and presumed causes of their acquittal, and enter a little fully into the particulars of the case.—With the characteristic freedom of a British subject, permit me to investigate the facts that were adduced—the character and situation of the respective parties, the credibility of the witnesses, your lordship’s concluding observations, and the consequent verdict of the jury.—It is an awful, a delicate, and an important undertaking, for it concerns the life and safety of every individual.—Our brave soldiers and seamen are most materially interested in the decision.” What? was it an object to this writer to point out to the soldiers and seamen, that they particularly ought to be dissatisfied with this verdict?—He proceeds—“a subject of this nature ought not to be lightly treated or hastily dismissed.”—Now mark the contrivance of this libeller—After having uttered the most virulent invectives against the judge and the jury, their defence suggests itself to the mind of the author of this libel:—Your minds will probably suggest it to you:—You will say, you do not believe these persons were guilty.—But, says this libeller “I will deprive you of that defence:—it shall be my business to point out, that it cannot be supported,” and with that view he goes on to say—“I must therefore trouble your lordship again on these points, and by a brief analysis of facts, and a comparison of the law of evidence, as hitherto established in our public tribunals, with the doctrines recently asserted at the above trials, shall endeavour to show, that if the latter be received and admitted as a rule of practice, and a maxim of English jurisprudence, it will in future be utterly impossible to produce legal and substantial proofs of guilt, or procure the conviction of a murderer or an assassin:”—What is this but to say, that the learned judge and the jury have proceeded upon principles,

which, if followed up, would render it impossible hereafter to convict a murderer or assassin?

Gentlemen, do I not waste my words, in stating to you this most atrocious libel upon the persons against whom it is directed?—I think, considering the facts which I have stated to you—considering the repetition of these imputations—the multiplying of them:—first attacking the jury, then attacking the judge:—I say, considering these things, a deliberate purpose to arraign the general administration of justice in this country is made manifest. But lest this purpose should not be sufficiently answered by these two libels which I have stated to you, they are followed up by a third. The last I read to you, was the libel upon Mr. Justice Le Blanc: the next is directed against the gentlemen of the jury, and you will not fail to observe how their conduct is spoken of. The libel upon the jury begins thus:

“To the Gentlemen of the Jury, at the late trial of captain Chapman.—Gentlemen, when public indignation is excited at the conduct of an inhuman individual, when the horrid acts of that individual are substantiated by the clearest concurring testimony, the plain steps that a jury have to pursue, is to follow the natural instinct of their hearts and understandings, and by deciding in conformity, they still keep elevated the opinion of the impartial and retributive mode—trial by jury. But when, contrary to all expectation, their decisions give liberty to such inhuman monsters; when they seemingly set at defiance the clamorous calls of justice and humanity, the public indignation, though doubtless unavailing, cannot be altogether overwhelmed by the impetuous torrent of judicial corruption.”—Imputing, therefore, to the jury, that their verdict was founded on judicial corruption.—Then he says, “It is on you, gentlemen, at this moment the eyes of thousands are fixed with suspicion;—you are called upon to explain and snatch from reality the more than visionary aspect of approaching tyranny. If, in the impartial summing up of the horrid matter brought forth, you were told to weigh well the probability of the evidence,—if you were emphatically told to consider, if, under all the circumstances, whether the prisoner ought not to be entitled to his acquittal; yet still, Britons actuated alone by a thirst of public justice—men appealing to their own hearts for decision, whose very souls might be supposed to be convulsed with gathering indignation, were sworn to decide impartially and without influence.

“I am willing to suppose, gentlemen, that you are possessed of common capacities, and, as being Englishmen, of hearts flowing with commiseration and humanity:—it required no imbibed knowledge to form a decision in this case; the circumstances flash conviction to the mind of the meanest individual.—Good God! what then instigated you? Let the

public know your motives, and wipe away that otherwise irretrievable stigma which you have attached to your own names, and to the distributive justice of our country. If, when the agonizing groans of the tortured victim congealed the blood flowing round the shocked heart of every beholder:—if, at a spectacle so horrid, even the savage African could weep; the very souls of a humane British jury ought to have melted into more than individual commiseration;—their just verdict ought to have expunged from nature the culprit, whose acts render him immortally inhuman:—if, when the victim’s soul was ready to quit its lacerated boundary, a solitary consolation could have invigorated its flight, it was that retribution would overtake the monster; that the propitious breeze, which wafted to his native land the heart-rending tale, would secure to his departed soul vengeance and repose.—To you, gentlemen, with his last departed groan, he committed, while hope cast a momentary smile on his visage, his individual cause and the cause of humanity.”

He concludes in this manner: “I appeal then to a discerning public;—even to your own hearts will I appeal, whether you have done your duty as Englishmen, as jurymen.—I here pause—I fancy I see the blush of conscious error and unworthiness overspread your cheeks. Do then, I conjure you—if you value your reputations, if you wish the public to believe that you acted uninfluenced—give one solitary reason, why, with a unanimous voice, you did not pronounce the merited word—guilty! guilty!”

Such are the three libels for which the defendants are this day called upon to answer before you. I state to you (as I do most firmly believe to be the fact) that the object of these publications was to bring the justice of the country into disgrace and disrepute, by traducing and vilifying the characters of those chiefly concerned in the administration of it. The means used are—misrepresenting the facts that took place, suppressing all the facts that produced the verdict (which I say was justly given), and then holding up the judges who presided at these trials, and the juries who found these verdicts, as objects of universal public detestation; stating to the world that, being convinced in their own minds that the prisoners were guilty of the foulest murders, they had nevertheless, from corrupt and wicked motives, from something which was kept back, and which influenced their minds and biassed their judgments, betrayed their duties, violated the justice of the country, and basely and corruptly acquitted those whom they ought to have condemned.

That these are libels is evident, upon the mere statement of them. If you do not at once think so, it would be in vain for me to say a word. You have only to say, whether the fact of publication be or be not brought home to the defendants;—that fact will be proved to you by the clearest evidence. I do not expect

to hear from the learned gentleman who appears as counsel for these parties, any arguments to show that their publications are not libellous. If he should venture to use any such, I shall have an opportunity hereafter of replying to them.

Jacob Harvey sworn.—Examined by
Mr. *Garrow*.

Did you see the certified copy of the affidavit made by the defendants, and filed at the Stamp-office, signed by the commissioners of stamps?—Yes.

Mr. *Garrow*.—By act of parliament* this affidavit is made evidence of the fact of the parties being printer and proprietor.

The affidavit was put in and read. It appeared to be duly signed by the commissioners of Stamps. It appeared by it that John Harriott Hart, of No. 23, Warwick-court was the printer, and Henry White, of Park-place, Islington, was proprietor, of the newspaper called the Independent Whig.

Henry Walwyn Raven was called, and put in the papers in which the libels were inserted. It appeared, that the newspaper of the 17th of January contained the letter to the editor of the Independent Whig first stated by the attorney-general, and that the paper of the 24th of January, contained the two other letters, the one addressed to sir Simon Le Blanc, and the other addressed to the jury.

A copy of the record was then read by Mr. Lowten, and while it was reading, Mr. Adolphus, the defendant's counsel, perused the original record, in order to see that it was correct.

Mr. *Adolphus*, at the reading of a certain passage in which the word "criminal" occurred, observed, that in the original it was "crimnial."

Mr. Justice *Grose*.—I dare say, Mr. Adolphus, you read it "criminal."

Mr. *Adolphus*.—No, my lord, I read it "crimnial" If I were to guess what it ought to be, I should say it was "criminal;" but, if I were to read as it is, I should say it was "crimnial."

Mr. Justice *Grose* [having looked at the record]—I think it is "criminal," and I dare say the jury will think so. I dare say you think so. There are a number of perpendicular strokes, which can mean nothing else than the word "criminal."

[The objection was over-ruled.]

Upon reading a subsequent part of the record, it appeared that the word "individual" was without the initial "i," and stood "ndividual."

Mr. *Attorney General*.—There is no *i* in the original paper, and we have only professed to follow it in the record.

Mr. *Lowten* then proceeded to read the whole of the libels.

Mr. *Henry Walwyn Raven* was again called, and produced the patent by which sir Simon Le Blanc was appointed one of the judges of his majesty's court of King's-bench, and which was dated the 5th of June, in the 39th year of George 3rd.

Mr. *H. W. Raven* examined by Mr. *Garrow*.

Have you examined the record of the acquittals of Bennett and Chapman?—Yes.

Where did you examine them?—In the office of Mr. Shelton, the clerk of the Admiralty sessions.

Mr. *H. W. Raven* cross-examined by
Mr. *Adolphus*.

How did you examine them?—By having the records read to me, and then having the copies read, and looking at the record myself.

Charles Jones sworn.—Examined by
Mr. *Attorney General*.

Mr. *Attorney General*.—We call this witness only to prove that Rickman, for the murder of whom Thomas Bennett was tried, was a boy, as we have stated the fact to be so in the information.

You were present at the trial of Bennett for the murder of Rickman?—Yes.

He was charged with killing a boy?—Yes.

Rickman was a boy?—Yes, a boy about fourteen or fifteen years of age.

Mr. *Attorney General*.—That is our case on the part of the prosecution.

Mr. *Adolphus*.—The publication of the libel in London is not proved.

Mr. *Attorney General*.—The evidence of the publication is the affidavit. By the act of parliament, the affidavit is evidence of all the facts it contains, and newspapers have been produced, purporting to have been published at the place where the affidavit states. [The learned gentleman then read the clauses in the act of parliament, by which the affidavit filed by the printer and publisher at the Stamp-office, and the production of the newspaper containing the libels, was made evidence of the fact of publication.]

Mr. *Adolphus*.—That act only says that it shall not be necessary to carry the proof of the publication to the very house where the defendant resides.

Mr. Justice *Grose*.—It says that the affidavit and a copy of the newspaper shall be evidence of the fact of publication by these parties. The act was made for this very purpose.

* Stat. 38, Geo. 3, c. 78.

Mr. *Adolphus*.—I was aware of the act, but I did not think it went so far.

Mr. Justice *Grose*.—The act was made to obviate this very difficulty.

Mr. *Attorney General*.—The paper itself is evidence of the fact of publication.

Mr. Justice *Grose*.—The act makes the production of the affidavit and a copy of the newspaper, evidence of publication by the printer and proprietor.

DEFENCE.

Mr. *Adolphus*.—Gentlemen of the Jury ;—On behalf of the defendants, who are now on their trial, I rise to address you with uncommon anxiety ; for, in proportion as the crime with which they are charged is of the deepest magnitude—in proportion as the libel attributed to them and the facts it contains are of singular atrocity—so much the more difficult is my task :—the greater the impression which the arguments of the attorney general have made upon your minds (and I can hardly suppose that they have not made an impression) so much the more difficulty have I in performing the duty I have undertaken.

Gentlemen, whatever intention may be attributed to the author of these publications, I am solemnly persuaded that in neither of them was he actuated by the motives which are imputed to him in the information.—I maintain that in no degree are they calculated to produce all, or any, or one, of the effects stated by the attorney-general. I am so fully persuaded of this, that although some of the words and expressions in this printed paper may not be such as a person would have used if he had been writing coolly in his study—though they may not be words and expressions such as the attorney-general himself would have used—still I maintain they are such as any man, feeling warmly upon the subject, might have adopted, and yet, at the same time, have considered that he was expressing himself with decency and propriety concerning the trials to which they referred.

I do not know that it is meant to be asserted, that in any court of justice in this country there is any charter or peculiar privilege which exempts their proceedings from animadversion, provided such animadversion is conducted with temperance and decency. I do not know that it has ever been laid down by any authority competent so to do, that when a judge has summed up the evidence, and has given his opinion to the jury, and the jury have given their verdict—I say, I do not know that it was ever laid down to be the law of the land, that no man should utter a single syllable with respect to the decision—that no man should comment upon the verdict, and the principles upon which it might have been given. If I am to hear this to-day, I shall hear a new principle of law, and one

which, in my opinion, will degrade the jurisprudence of this country much more than the publications which are the subject of the present prosecution: for, the system which is placed out of the reach of inquiry, is *ipso facto* denounced as too bad to be inquired into. If once it be said that the verdicts of juries are not open to be investigated in print, then juries have a charter and sanction to do wrong, and to violate their oaths with impunity. If such a doctrine were once to be established, the boasted right of trial by jury would be of no avail to the subjects of this kingdom; there would be no difference between the trial by jury and the solemn farce acted by the inquisition of Spain, or by the secret court of Westphalia, where an arbitrary authority is established, and where it is impossible for any man to hold either his life or his property in any thing like security, because the sentence of the judges, and the evidence on which it is founded, cannot possibly be examined. When I say this will be a new system to me, I say it on serious grounds; I say it after much observation, and consideration of the subject. We know that from the earliest time of public trials in this country, but particularly since the art of printing was invented, all cases that have greatly interested the public mind have been submitted to the press, and those who have felt warmly upon the subjects of them have been in the habit of stating to the public the opinions they entertained. This has, in fact, been the case with respect to every trial of any importance since the British constitution has existed. The circumstances of every case of interest to the public have been uniformly discussed through the medium of the press. Pamphlets upon pamphlets have appeared in every instance; and yet it has never been thought proper for the attorney-general to interfere and prosecute such publications, as tending to destroy the trial by jury and subvert the justice of the country, as tending to produce the effect predicated of these publications on the face of the record—namely, that they are calculated to bring the laws into contempt, and to degrade the administration of justice, and substitute something in the room of the laws that might be more suited to the views of the writer, but more detrimental to the public.

I say, that if any man can be wicked enough to wish to destroy the trial by jury, whatever he might substitute in its stead, must be so inferior to what he would have destroyed, that I should devote such a monster to all the punishment that could be inflicted on him—and among the lamentations I should make, the first would be, that the arm of the law could not strike a severer blow than it can in consequence of your verdict this day.—As you have heard these publications read, I put it to every one of you, most solemnly, whether the writer of these papers does not evidently profess a strong and deep-rooted respect for the trial by jury; and whe-

ther any thing more appears than that upon two occasions, on which the writer conceived the trial by jury had been invaded and broken in upon, he has simply exerted his endeavours to show that a different result ought to have taken place.

What then does all this charge of an attempt to overturn the trial by jury mean? It comes to this: that he wanted to render the trial by jury more pure and perfect, for the beneficial administration of the law; and therefore it is said that he wanted to overturn it. He has made an appeal, not, perhaps, in the words you would have chosen,—he has not clothed his ideas in the words, which, perhaps, the attorney-general would have adopted; but he has represented them, from the honest and genuine feelings of indignation at his supposing there was an improper influence on the minds of twelve men impanelled as jurors upon two different occasions—both occasions of great interest and enormity; and then because the trials had terminated in a way which he thought unjust, he warned the jury to reflect on their conduct; to state whether any individual, by overbearing influence, had induced them to swerve from the truth and their duty, and to repent and bring back the trial by jury to a state of greater perfection, but by no means to overturn it. He states that the trial by jury is the most invaluable blessing of Britons, and he desires them not to suffer it to degenerate from the pure state in which it was delivered to us by the immortal Alfred—to restore it to its true character, and not to suffer it to exist only as the toast of a tavern, or the motto of an hour.

When a man endeavours to find every excuse for a verdict which he considers wrong—when he does not impute corruption—when he imputes only misrepresentation and a mistaken sense of humanity—in short when he imputes every thing but an intention to do wrong—can it be said that he is attempting to overturn the trial by jury? Can he be said to be endeavouring to bring the laws into contempt, by cautioning the jury, when a case similar to the one he is advertising to comes before them, not to be too humane—not to be too readily yielding, even to the opinion of a judge on such an occasion, but to exercise their constitutional privilege, to consult their own honest feelings, and to bring in such a verdict as emanates from those feelings, and not from the influence or dictation of any person whatever?—The trials that occasioned the publication of these papers, and the nature of which the attorney-general opened, certainly do, as they have been published to the world, wear a very different aspect and appearance from the colouring which the attorney-general has given to them. The attorney-general will forgive me for saying this; he is one of the last persons to whom I would wish to give offence; but, in order to show the correctness of the observation I have made, I will first advert to the

case of Bennett: upon the evidence laid before government in both cases, government thought it necessary to send the attorney-general or solicitor-general to bring these men, Bennett and Chapman, to their trials. There were upon the evidence grounds enough to induce government to institute an inquiry as to these men, and to bring them to their trials before a jury of their country.

What turned out in proof is perhaps not in your memory—I shall venture to state it. The person, whom Bennett was charged with having murdered, was a poor child, who was taken on board a ship, bound, I believe, to Smyrna; however, bound outward. He was in a very imperfect state of health, but not in a state that threatened any bad consequences. The captain of this ship took an unaccountable aversion to this unfortunate boy: he beat him unmercifully; he made him remain on the deck day and night, without a rag to cover him; he stript him stark naked, and placed him in a tub, which had been occupied by a pig; he held him up, and then plunged him down again in the most brutal manner; he repeatedly beat him, and, in addition to this usage, he deprived him of his natural food. The mate remonstrated with him, and told him, he would be the death of the boy. The answer was, “do you take him, and I will give him up to you.” The captain went on with his cruelty to the last moment of his life. He sent him up to the main-top, naked as he was, and there the poor child died by the excess of cruelty inflicted upon him. The topic urged by way of defence was, that the poor boy was slovenly and dirty; that he had a scorbutic complaint; that he was indolent; and that he, the captain, knew no other way to bring him to a different course of life than the manner in which he had treated him. But, gentlemen, there is more than this: it is proved that he knew he was doing wrong; for, when a king’s ship was alongside, and the officers were coming on board his ship, he said, “put that boy’s jacket on; I should not like the officers of a king’s ship to see that I had a naked boy on board.” The clothes were accordingly put upon the boy, and afterwards taken off again.—When the men and officers were gone away, the poor lad was stripped and kept stark naked as before. Were not these facts such as to generate a universal desire and reason for an inquiry in the minds of the public, and to ask for something like animadversion upon such a trial as these men had received who had been found not guilty, only because the acts they were proved to have committed were not such as immediately to have produced death, but produced it by lingering degrees? That such was the case is proved upon the evidence. It is in proof by two foreign soldiers, catholics who were produced and sworn on the cross with all the ceremonies and formalities of the Romish religion, that, after the boy’s death,

it seemed to them the child had been beaten and bruised so much, and the wretched state of the corpse was such, that he looked like our blessed Saviour when he was taken from the cross.

Mr. Justice *Grose*.—How can this be proved? We should be subverting the very foundation of the law, if we were to suffer the evidence upon the trial to which you are referring to be repeated. And as these facts cannot be inquired into, they consequently cannot be stated. The verdicts on those trials remain for ever as they were pronounced, and the propriety and justice of them cannot be tried incidentally.

Mr. *Adolphus*.—The attorney-general took a review of them in his opening speech. I am speaking of what appears on the publication of these trials, in order to show that the animadversions of the defendants were proper. The account of the trial, from which I state the facts, is taken by the licensed reporter of the Old-Bailey.

Mr. Justice *Grose*.—That might be an argument in mitigation of punishment, if it were well-founded; but I cannot hear it stated in this way, because you are here to argue merely that the defendants have not been guilty of a libel.

Mr. *Adolphus*.—The attorney-general has said, that these papers were published with certain guilty intentions. I take it that it is necessary to mention the evidence which operates against that conclusion.

Mr. Justice *Grose*.—The attorney-general merely stated so much of the trials as was necessary to make the whole of the case intelligible to the jury.

Mr. *Adolphus*.—What I have stated is only to make the defence intelligible.

Mr. Justice *Grose*.—But what you have stated you cannot prove. It is impossible that you can prove it.

Mr. *Attorney-general*.—I have no objection to the learned gentleman stating whatever he pleases. I do not wish to cramp him in his defence. Perhaps it will be more for the advantage and interest of the public, that he should proceed as his own discretion directs.

Mr. *Adolphus*.—I do assure you, I would not be guilty of trifling with the patience of the Court by repeating the circumstances of these trials, if I did not think them important to your forming a right judgment in this case. The attorney-general says, he does not wish to cramp me in my defence. I am obliged to him. I know the attorney-general will have the advantage of a reply. I know the impression a reply from him is likely to make; and I know that every word I shall utter is at the risk of myself and of my clients. If I shall be able to succeed in making the impression which I am desirous

of producing on your minds, namely, that whatever these defendants have published, they did not do it with the intention of overturning the trial by jury, nor to set up something in its stead, nor to make juries amenable to the Independent Whig—if I shall be able to do this, I shall then have done most happily for my clients, and you will consequently pronounce them—not guilty.

I was proceeding to observe to you, that, atrocious as were the circumstances which appeared on the trials referred to, and atrocious as the conduct of my clients has been represented by the attorney-general to have been, in animadverting upon those circumstances, yet the fact is, that my clients took no notice whatever of them at the time. The first trial took place on the 18th of December, 1807, and no notice whatever was taken upon that occasion of any thing that had passed; there is not a single observation reflecting either upon the judge or jury at that trial; nor was there any thing then said with respect to the subsequent trial which was then known to be coming on.

In the month of January, 1808, the Court of Admiralty Sessions again assembled, and Chapman was tried for the murder of this boy. There were three indictments, but he was only tried on one, because that one not having been found successful, the solicitor-general gave up the prosecution of the other two, conceiving no doubt that they could not be maintained.—The circumstances which came out in evidence against Chapman were more strong and atrocious than those which had been proved upon the indictment against Bennett: for it appears, that the moment the person whom Chapman was charged with having murdered came on board, he consigned him to death. He said to him, “I know you—I know you are sent by the owners to be a spy upon me; but I will take good care you shall never get back to England to tell them of my conduct;—Accordingly, he pursued him with the most unrelenting ferocity; he beat him in the most savage manner: he lacerated him with stripes: he held him up to the derision of the slaves and the crew, by stripping him stark naked, as the boy in the former case had been, daubing him over with tar, and calling the slaves from the hold to laugh at and deride him.—He continued this violent and cruel treatment till the day this unfortunate person died.

The evidence that went to prove these facts happened to be most extraordinary:—it happened, that not only the surgeon, who had been punished for his supposed ill-conduct, and who must be supposed to have harboured resentment against the captain,—it happened, that not only he, but every survivor amongst the crew, were against the captain; and what was worse, his own letters, nine in number, were also produced against him:—they were letters, begging of the par-

ties who were to be the witnesses, not to come forward against him; but to join him against the doctor. He says to them, "I will give you all the money I can raise—my life is in your hands—join with me, and take care of me against the doctor."—I have no doubt that the excellent and learned judge, who tried the prisoner, represented all the facts and circumstances adduced in evidence to the jury, with candor and fairness. I would rather bite off my tongue, than intimate a supposition, that the learned judge was capable of doing otherwise—I have no doubt, that his instructions to the jury were, in a certain degree, to the advantage of the prisoner; yet I contend there was not enough to make it apparent to any person out of court, that this was a case in which a verdict of acquittal ought to have been pronounced.—I admit that, at the trial, the mutinous disposition of the crew of Chapman's vessel was insisted upon: but it was not proved farther than as the resistance of a wrong may be supposed to be a manifestation of a disposition to mutiny. The mutinous disposition was only proved by the captain of another slave-ship, who came along-side, and who threatened to fire upon the crew, and to whom they said, "We have as many guns as you have, and, if you do fire into us, you must take the consequence"—they would not condescend to submit to the authority of the captain who came along-side.

Now, these were the only facts proved, as to the existence of a sort of conspiracy; they were proved in a very imperfect manner, by persons only connected with the captain, and not at all connected with the ship; and it appears, that this evidence was the ground the jury had for pronouncing the verdict of acquittal.—I am far from saying they were wrong—I am not so rash as to say so—I am not so rash as to say what I do not feel—I am sure sir Simon Le Blanc, in his directions to the jury, was as humane as the attorney-general has described him, and I dare say the jury gave their verdict according to their feelings of the effect of the evidence, though not according to the feelings and opinions that prevailed elsewhere; and although I am far from saying, that either the judge or the jury were wrong, yet I am also far from saying, that they are wrong who think the judge and jury were so.—If a man argues in temperate language, with reference to the verdict of a jury, whatever his opinion may be, he has a right to state it—if he feels in his own mind that an improper degree of influence has been used—that the facts solemnly urged have not had their due weight—there is nothing in the law (at least nothing that ever I heard of) that prevents his publishing such his opinion; and therefore I say that these individuals do not stand amenable to this prosecution.—I contend that there is nothing in the letters that have been read which can indicate more than that the defen-

dants were actuated by an impression and firm belief that these men were guilty;—that the juries, in acquitting them, had done a thing of which they might afterwards repent; and that, therefore, it well became them to state to the public the reasons upon which they had been induced to return the verdicts of acquittal.

Gentlemen, it is not much above a twelve-month since there was a case of great public interest at the Old Bailey, I mean the case of the two men who were indicted for the murder of Mr. Steele; they were convicted upon testimony, which, compared with the evidence in the case of Chapman and Bennett, was light as feathers compared to gold.—I am speaking of the case of Holloway and Haggerty.*—If those men were found guilty on sufficient grounds, surely, considering the evidence upon which they were convicted, these prisoners, Bennett and Chapman, were most improperly acquitted. Upon the subject of that trial there was a long and able pamphlet, arraigning the verdict of the jury, and investigating the whole course of the proceedings, observing upon the conduct of the individuals accused previously and subsequent to the trial, and showing a great many defects in the proceedings themselves—yet no notice was taken of this, because every body perceived and felt that there was no charter, no immunity, in a court of justice, by which it was privileged from having its proceedings commented upon.—Where is the difference between the case of Holloway and Haggerty, and the case of Bennett and Chapman, except that, in the latter, the parties were acquitted?—The attorney-general says, that the humanity of the people makes the appeal natural, from a severe judgment to the side of mercy. Chapman, I admit, was acquitted; but it must be recollected that, in the words of the quotation used upon this occasion by the defendants,—"*Mercy but murders pardoning those who kill.*"—If mercy is interposed in favour of persons guilty of murder upon clear evidence, it is a privilege which belongs to the public to arraign the propriety of substituting mercy in the stead of justice.

I well remember the case of capt. Donnellan, for the murder of sir Theodosius Boughton. There was a long pamphlet written upon that occasion, full of reflections upon Mr. Justice Buller; but that learned judge never thought it necessary to prosecute the author—he never was of opinion that the trial by jury was in danger of falling into contempt by such publications, in a country where free discussion on every subject was one of the rights of the people.—It is idle to suppose that the hands of government can be strengthened by preventing inquiry and investigation. Every thing gained to govern-

* An account of this trial will be found in the New Ann. Reg. for the year 1807.—Principal Occurrences p. 43.

ment by the prevention of free inquiry is gained in vain; for, however you may fancy that you aid the government, or aid the constituted authorities, or render your own situation in the jury-box more secure and easy, the fact is, that it is at best but as strength given to weakness; for you weaken the system more than you strengthen the part. You will do more mischief to the cause of justice, to the habits of the people, and to the administration of the government, than you can possibly do good by finding the defendants guilty of publishing these papers as libels, unless you are in your own minds solemnly impressed with the truth that their intentions in publishing them were such as have been ascribed to them by the attorney-general. I do hardly think it possible for you, in the investigation of these cases, and the facts that led to them, to consider that the author of the publication in question, could have been influenced by any thing but an honest indignation against the persons who had, as he conceived, acted in an illegal; barbarous, and cruel manner.—If you are convinced that there was nothing in his mind that had the slightest tendency to subvert the trial by jury, or to bring into contempt the administration of justice, it will be impossible that you should be induced to say that these papers were published with the intent imputed to them by the attorney-general.

When it is said that this publication shows an intention on the part of the defendants to overturn the trial by jury, and the administration of justice, I must call your attention to this, that the trials to which the publications refer were prosecutions instituted by the king. To borrow a phrase that has been on a former occasion made use of, I may say "that the king came out of his own court baffled;"—these publications therefore were in support of the government, stating that the government was right and that the acquittal was wrong, and proceeded upon some error.

If, gentlemen, you will take the supposed libels, and well consider them, you will find that guilt was not imputed to any one.—Error is the very utmost that is imputed, and the jury are earnestly entreated to repent, and to make a statement of what led them to pronounce such a verdict.—In no place is guilt or corruption imputed to them. It is true that the expression, "judicial corruption," has found its way into one of the passages, but it is in no way used with reference either to the judge or the juries by whom the prisoners were acquitted; the idea intended to be conveyed was, that the words "judicial corruption" applied only to the deputy, Mr. Loveland, who had been supposed to be actively instrumental in promoting the acquittal of Chapman; but, whatever your opinion of this part of the case may be, you will recollect that this information does not charge that the publications were with a view to degrade

the deputy in particular.—You must consider that it was not only intended to bring that individual, but the whole of the jury into contempt, otherwise you are not qualified to find that these publications were published in the manner and with the intent specified.

With respect to the allegations, I know that by late decisions, contrary to the old practice, it is not necessary to state that the allegations contained in the libel are false.—In this case, gentlemen, the word false is altogether omitted.—There is no such word in the information.—The publication is stated to be scandalous and libellous, but it is no where stated to be false; therefore, I have a right to presume, from this concession on the part of the prosecution, that the allegation is true; for, where it is not alleged in an indictment that it is false, I have a right to call upon them to admit that it is true.—If you admit that the allegations were, in the minds and judgments of these men, considered as solemn truths, and that, as such, they thought it their duty to animadvert upon them—in such case, though they may have used words of greater strength and force than in prudence they ought to have adopted, yet it would be impossible for you to find a verdict against them.

A predecessor of my learned friend the attorney-general, and who now holds a situation of high trust and confidence in his majesty's councils, was once challenged in these terms.—It was asked of him, what would you Mr. Attorney-general do, if certain atrocities had been committed in other countries, and there had been publications as violent as these referring to them? What would you do, it was said to the attorney-general, to suppress them?—Mr. Perceval's was a general answer; he said, every one knows that during the late transactions in Switzerland there was not a newspaper that did not teem with observations more strong and coarse than any that are to be found here.—Observations which would have brought every editor within my authority, but I considered the atrocity of the acts, and the disposition of men's minds revolted at them.—I therefore allowed for the effervescence in the minds of those persons; and though I thought that they had expressed themselves with more force than I could have wished, yet I considered they had not expressed themselves in terms stronger upon such occasions than were allowed to be used upon the principles of a free press.*

Apply this to the present case, and try whether, under all the circumstances, every word in these publications may not be justified; but do not try it in the manner the attorney-general has, by reading and drawing inferences sentence by sentence.—If he made

* *Vide* Peltier's case in Vol. 7, p. 611, of this Collection.

any impression on your minds by such an excruciating examination, still bear in your minds the spirit by which the writer was actuated in adopting the language he has used.—Bear in your mind the compassion he felt in behalf of four murdered individuals.—Make allowance for his honest indignation at the barbarities of a trade which the legislature has abolished, and which all men have agreed in the propriety of abolishing; and then, making the case your own, say, whether a little intemperance ought to subject him to the punishment that necessarily must result from your conviction. I do not wish to undervalue or to under-rate the lenity with which the Court may be disposed to act in taking these particulars into consideration, but I am afraid that if these supposed libels come before the Court, there are many circumstances which ought to weigh with you, but which will not be attended to by the Court.—When it is once known that persons may be convicted for publications like these, see what the consequence will be; men will be afraid to make any animadversions upon the proceedings of courts of justice.—No one will be hardy enough to publish even strictures upon the conduct of a court-martial, or even to discuss and bring before the public any matters of history relating to any trial; unless such individual forgets his feelings as an advocate in the public cause, or has a special pleader at his elbow, to advise him, and to say, “go no farther, or you will be prosecuted for a libel.”

It is not my habit, nor has it ever been imputed to me that I am actuated by a disposition to make vain declamations in favour of imaginary liberty.—I have not been one of those who have recommended those attempts in favour of extravagant freedom, which I am persuaded universally tend to greater mischief, because they are specially recommended; but, that there may be no temptation to such visionary speculations, it becomes your duty to guard the moderate liberty which every subject has a right to enjoy in the free discussion of every public question.—It becomes you to promote the freedom of discussion, and to enable men, by your verdict, to investigate those cases of general and public importance, which it is the interest of mankind should be fully and freely discussed.—Had these presumed libels never been prosecuted, they would perhaps never more have been heard of; they were published as long ago as January last; and I dare say, that, in June, you might in vain have asked for a paper containing them.—This prosecution restores them to vitality, and gives them a new existence. It is not easy to make a whole British people feel long, that the acquittal of a guilty person is a thing which they ought to complain of. The humanity of the people of this country, is such, that they will readily adopt the principles in favour of it, which say, “let one or

two men live out the term of their natural existence, the evil is not so great as the effect of a rash and intemperate verdict, by which an innocent man is made to suffer.”—Such being the frame, tone, and temper of the public mind, this prosecution can only make the supposed libels more inquired after, in order that, by the perusal of them, men may make them patterns to know how far they may go, and be enabled to say, “such are the boundaries, beyond which it is not safe to proceed.” If you leave the public, in respect to general discussion, as free as the law leaves them, you can do no harm.

I have said already, that in order to give your verdict against the defendants, you must be satisfied that they are guilty of the whole matter charged in this information. It is of importance you should be satisfied, not only that the defendants are the publishers, but that the publication was with the intent charged against them; namely, the intent of subverting the trial by jury, and to destroy the constitution.—It was one of the objects of the bill, in the passing of which Mr. Fox and lord Erskine took so conspicuous a share, to enlarge the powers of juries upon this subject, and to enable them, although the publication was proved, to determine, whether it was published with the criminal intention and with the tendency stated in the information or indictment, and whether the defendants were actuated by the views and motives charged against them. I hope and trust, gentlemen, you will bear that act of parliament most strongly in your minds; your own rights and privileges are deeply connected with the preservation of the spirit of it; I hope you will consider what would have been your feelings, if any relation of yours had met with his death as these young men have, whose murders were the subject of the trials referred to; and if, for defect of evidence, the persons who had killed your children, had obtained a verdict of acquittal, would you have been satisfied, if no individual had been found with public spirit enough to have remonstrated against a verdict which had left you, not only in tears and sorrow, but without hope of recompense? If you take this into your view, it is impossible that you can find these defendants guilty of publishing these papers, with the criminal intention attributed to them.

Gentlemen, I leave them in your hands, persuaded that you will give such a verdict as will do honour to yourselves, and satisfy the public justice of the country.

REPLY.

Mr. Attorney-general.—Gentlemen of the Jury; When I had the honour of opening this case to you, it was necessary that I should enter into some detail of the trials of Bennett and Chapman, in order to render the libels which I charged upon the defendants intelligible to you: not that I wished to load

them with any greater burthen than that which they had taken upon themselves by the publications in question; but because they had not even affected to do that which their learned counsel states they had a right to do: for, from their not having affected to discuss the grounds of the verdict, from their not having pretended to state any thing but the strongest parts of the evidence on the one side, and from their not having stated any of the evidence on the other side, I concluded it was utterly impossible that the case should be intelligible to you without my going as shortly as possible into some account of what the nature of the trials really was, and into the evidence that really was given.

My learned friend has stated that which is wholly unfounded; he has stated that this information does not allege that the charges contained in the libels against sir Simon Le Blanc are not false, and that therefore he is entitled to assume that they are true. That is not so—it need not be alleged that they are false; not because they are not false, but because the truth or falsehood of them is not material. It was not therefore to be assumed that they were true. God forbid I should ever bring a case before you which any counsel should be able to state was not true. The fact is indifferent:—these are libels, and gross libels; and the defendants are brought to trial before you for having published them. I do not much complain of the ebullition—the effervescence of that vivid imagination which the learned counsel for the defendants possesses; I was unwilling to cramp him in the exercise of those powers of eloquence which we have seen him display, and which, I doubt not, should we hereafter see him among us, he will again exhibit. It was not with any injurious view towards the defendants that I, in the first instance, desired that he might be stopped; for I knew he would be exposed to much greater difficulties by having the reins loose, than by his being restrained. I considered, however, that if any restraint was put upon the defendants' counsel, it would hereafter be a ground of complaint; and therefore I was desirous that full space should be given him to take what ground of defence his own imagination suggested to him to adopt, if he imagined he had any that could be received; and that nothing might be left wanting, which either learning, ingenuity, imagination, or fiction, could suggest in their favor. Now the defendants have had the full benefit of all these talents displayed in an eminent way. You have had a history of this trial; an attempt has been made to rouse your indignation against the men, who, upon deliberate inquiry, were acquitted; and you are told that it was mercy and humanity that induced the defendants to state to the public that those who were acquitted were murderers; and, that though their country had pronounced them not so, they ought to be held up to public detestation as murderers, and as unfit to be

received into society. And in truth the defendants have had this great advantage, that from the line of the defence which they have imposed upon the learned gentleman, they have had the opportunity once in the Independent Whig, and now by their counsel, to hold out these persons to public detestation. But these are not matters for your inquiry to-day. I know it is for you to say whether the defendants have or have not published these libels with the intent charged. I know that by the act of parliament, his lordship will feel it his duty to state, whether, in his judgment, they are libels. But I concern myself not with these considerations—for really to dispute seriously whether these papers are or are not libels, is to endeavour to impose on your understandings. For any man to suppose it possible that you can believe that the writer of these papers did not thereby intend to libel sir Simon Le Blanc and the jury, is to proceed in the hope that you are very wicked, or that you are drivellers. It is impossible that you should not see and feel that this is the tendency of these papers; and feeling that, it is impossible that you should not find the defendants guilty.

My learned friend has said that it would be a most melancholy state of things, if that which passes in a court of justice could not be made the subject of discussion; and he has, in a manner, which, on cool deliberation, I am sure he will wish he had not adopted, alluded to trials in other places, and thrown out observations upon what was given to the public by other writers upon those occasions—contrasting those cases with the present, and stating it as a sort of choice between the juries libelled here and the juries libelled there, to say which of the cases were most unjust. That, I think, is not the way in which a man who wished well to his country would treat such a subject. It could have no effect but to inflame. If it was meant for you, it was taking a small measure of your understandings; and if it was meant for others, it had much better have been spared.

You have been told that the discussions with respect to what passes in the courts of justice ought not to be restrained, and that these publications are such as follow naturally from the warmth of the person who published them, and whose object was to discuss the propriety of the verdicts; and to my utter astonishment it has been stated that in these papers the discussion has been conducted with decency and propriety. Now, gentlemen, I would ask you, is it decent or proper to state that the verdict is the effect of judicial corruption? Is that weighing the facts of a case, and considering whether the conclusions drawn from the facts be or be not legitimate? Is it decent or proper to state to the public, that the verdicts of a jury, and the directions of the bench, have excited universal alarm, horror, and disgust? Is that decent or proper? In what school of decency and propriety has

my learned friend learnt that such publications are consistent with its rules? But it was impossible, with the ground my learned friend originally took, that he should not fall into these inconsistencies—the fault however is not his—it is his misfortune that he is engaged to defend a case which is indefensible, and where every topic of defence must fall from under him. To discuss the propriety of what is stated by the bench, and to discuss the propriety of the conclusions the jury have drawn, it is necessary that the evidence on both sides should be examined, and that the evidence which is given on the one side should be contrasted with and set against the evidence which is given on the other. Now, take the representations of the learned counsel: here is a man tried for the murder of a boy; the surgeon says he does not believe the boy died of the treatment he received: another man is next tried, who, if the facts alleged were true, was guilty—but the question was, whether, under all the circumstances of the case, the testimony of the witnesses could safely be relied on? In discussing the former case, you would state the facts proved on the one side, and then state the evidence on the other. You would state the evidence of the medical person who swore the boy did not die of the treatment he had received. You would then discuss the effect of that treatment, and the credit due to persons of the first professional distinction in this city, who swore that the cause was not adequate to produce death. No man can collect from any one of these papers, that the treatment which this boy received was such as to produce his death; and yet that being the only question in the case by the admission of the learned counsel, he still insists this is a fair discussion of the question, although the only fact in dispute is not once stated.—What is stated?—Plainly, that a murder was committed—that there was no doubt about the facts; and yet that the jury, under the directions of the judge, without any evidence to acquit the party, found him not guilty. Is this to be called in a court of justice the fair discussion of a question?—Rather is it not a gross misstatement of what passed, for the purpose of defaming the judge who presided, and the jury who delivered the verdict?

Gentlemen, I state now, as I did in the opening, that the object of these publications was to bring the administration of justice into disrepute—I repeat that: but we are told that one of these papers, so far from showing that the author wished to bring the administration of justice into disrepute, proves, that his object was, to uphold the dignity of the administration of justice, and the purity of the trial by jury; that the author states his respect and regard for the trial by jury, and only expresses his regret, that, in these cases, the verdicts had not been such, as, looking to what other verdicts had been, he could have expected from a British jury.—What is that

but to say—while such verdicts are given as I can approve, or I can control, I will speak of you in terms of respect—but with regard to those verdicts which I do not approve, and in which I cannot control the juries, I will speak of them in the way I have done with regard to this.—To say, that he ushers in his gross abuse, by a general approbation of the trial by jury, is really to treat you like children, if it is expected that you are therefore to conclude, that he did not mean to bring the administration of justice into contempt and disrepute.—You have been told, that what you have to consider is, whether these libels were published with a view to overturn the government; and you were informed, that as these prosecutions had been instituted by the government, that therefore the government must have wished the conviction of the prisoners; and that the prisoners being acquitted, those who arraigned the conduct of the jury, in acquitting them, were in reality supporting the government.—Government wish for the conviction of an individual, because they put the prosecution in motion!—It cannot be ignorance which makes the learned gentleman resort to such an argument—he must know, that when a charge is made against such men as Bennett and Chapman, it was the duty of government to bring them to trial, but not with any wish on the part of government, that they should be convicted, anxious only that justice should be done, and that they should be convicted or acquitted—found guilty, or declared innocent of the charge, as the justice of the case required. To say, in the first place, that this libel was not published with a view to overturn the government, and to endeavour to support that assertion, by saying, that because government instituted the prosecutions, that government must have wished for the conviction of the prisoners, and that therefore the writer was taking the part of government, is a mode of argument unworthy of the learned gentleman.—If I possessed less respect for him than I do, I should give it some other name—I should attribute such an argument to some other cause than merely the case not furnishing him with a better topic of defence.

It is truly suggested to me, by my learned friend (Mr. Garrow), that government causes a prosecution to be instituted, because they see a case fit for inquiry—their business is to put the inquiry into motion; but their wish is only that justice should prevail, whether it may lead to a conviction or acquittal.

It has been stated by my learned friend that none of these libels impute any crime to sir Simon Le Blanc, or the jury—that they impute nothing but error—that the writer lamented the error and wished to prevent the repetition of it; and demands that the jury may give some explanation of the motives of their conduct; and it coming across the mind of the learned gentleman, that there were in

the libel such words as judicial corruption, he says, that expression does not imply a general charge of corruption in the jury, or a general charge of the undue administration of justice, but is applicable only to Mr. Deputy Loveland. He states that the only object was, to charge Mr. Deputy Loveland with corruption—that is the way in which he wishes to get rid of the charge respecting judicial corruption.—If the facts on which he argues were true, perhaps there would be no difficulty in getting rid of it; but unfortunately for the argument, Mr. Deputy Loveland is mentioned in the libel of the 17th of January, and the expression “judicial corruption” is in another libel of the 24th of January. In the libel that speaks of Mr. Deputy Loveland there is not a single word that speaks of judicial corruption.

Another observation occurs to me—it is said that every one of these libels is in the spirit of fair and free discussion. Now here is a very short passage, which I will state to you: “To the Editor of the Independent Whig; The professions you invariably make to the public, as editor of the Whig, as well as under the signature of Crito, will, I hope, animate your pen on the subject of the late trial for three murders at the Old Bailey!!! The former one for the cruel, systematic, gradual torturing to death a poor boy, was bad enough, God knows, but the last eclipses every thing before recorded. Henceforth, away with the hitherto popular foolish Erskinean boast of ‘Trial by Jury;’ for the sake of injured humanity, let us have no more of these boasts. It is reported that Mr. Deputy Thomas Loveland, of Aldersgate-street, baker, has the merit upon this occasion of having chiefly contributed to prevail upon the rest of the jury to pronounce the verdict of acquittal, which has astonished every individual. Your language is mostly nervous, strong, and forcibly energetic. Pray, for the sake of injured justice, exert it on this occasion with full force, and the effect will be great.” Now here is a general comprehensive abuse of the jury, without reference to any one of the facts, and yet you are told this is a publication in the spirit of free and fair inquiry, weighing the facts on one side against those on the other, and by comparing them, determining whether the verdict was well or ill founded. It is trifling with you either to state such arguments or to answer them.

In the libel against sir Simon Le Blanc, he implores his lordship to revise the proceedings (there is nothing like a discussion of the facts); he says, “be not deceived, nor lay that flattering unction to your soul, that these horrible and atrocious acts will elude the inquiring gaze of public observation,” &c. Is this the language of a man who was not wishing to impute any thing but error? I understood from the learned counsel for the defendants, that the object of the publication was only to impute false humanity and mistaken mercy to the judge and jury—not

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to charge either the one or the other with any thing else. If that had been their object, would they have addressed the learned judge by saying “Do not deceive yourself—do not lay that flattering unction to your soul?” This is language which can only be applied to men who are conscious of having acted corruptly; to such men, you naturally desire that they will not lay the flattering unction to their souls, that their conduct can escape or elude the inquiring gaze of public observation; but to those whom you suppose misled by error, you state the facts and point out your reasons for thinking they have erred. Here is not a word of reasoning. All is invective and abuse. Mark how it proceeds, “No, my lord, our laws and constitution, the tribunals and jurisprudence of England, have received a wound that threatens their destruction. The Magna Charta and Bill of Rights have been almost rendered useless and abolished. The lives and personal safety of individuals have been made the wanton sport of brutal malice: and the chief security and best blessing of our immortal Alfred, the Trial by Jury, has been perverted and destroyed.” By whom and how perverted and destroyed? By the learned judge who presided, and the jury who acquitted under his direction. Now, I ask you, whether to state of the judge who presided at such a trial, and the jury who, after a patient attention to all the circumstances of the case, relieved their consciences, by acquitting the parties accused—I ask you, whether to state of them that they had perverted and destroyed the Trial by Jury was not one of the grossest libels that could have been uttered? I ask you, whether it is not holding them up to the greatest detestation? I ask you, whether it is not saying to the one, that he has been guilty of an impeachable offence, and to the other that in the exercise of their duty in a judicial proceeding, they have been so far culpable as to render themselves the objects of punishment, by the operation of a writ of attain? I ask you, whether it is not imputing to both the greatest misconduct that men can be capable of committing? It costs these gentlemen nothing to utter these libels. If they be not convicted for publishing them as libels, they go unpunished—there will be nothing to restrain them, the public security will have no hold upon them except by the tie of their own consciences; but you, gentlemen will recollect, that the learned judge, whose conduct is arraigned, and the jury, whose conduct is arraigned, act under the solemn obligation of an oath, and it is imputed to them that they have acquitted persons accused of murder, conscious at the same time that they were guilty of that crime.

I cannot conceive any thing more detestable and wicked than the conclusions of these libels; the one which suggests to sir Simon Le Blanc, that there may be something in mitigation of his conduct—that

this writer is willing to believe his lordship supposed the party innocent; and the other, in which the jury are called upon to state their reasons for the verdict they had pronounced. One of these libels contains a promise to do that which the learned counsel says every editor has a right to do. The writer promises to enter upon a fair, full, and free, discussion of the facts on which the verdict was decided;—but he gives no such facts, he only states that he reserves them for a future discussion; but, such discussion never afterwards makes its appearance. He says that our brave soldiers and sailors are materially interested in the decision; and, lest it may be supposed possible, that, in the discussion which is promised, but which is not given, something should appear favourable to the prisoners, he says, he shall show their guilt by a brief analysis of facts, and a comparison of the law of evidence, as hitherto established in our public tribunals, with the doctrine recently asserted at the above trials. So, you see, gentlemen, that he states, that he shall hereafter discuss the facts, which, however, he never does discuss. He hopes to persuade his readers, that, by the discussion, all those conclusions will be justified which he previously draws without the discussion. He states, that the principle laid down by the judge, and adopted by the jury, will render it utterly impossible in future to produce legal and substantial proofs of guilt, or procure the conviction of a murderer or assassin. Thus imputing to the judge and jury, the establishment of principles, which hold out impunity to all who shall be guilty of murder and assassination.

Is it not a waste of time to contend that it is a libel of the grossest nature, to say of a judge and jury that they have acted on principles which hold out impunity to crimes of that magnitude? Is this imputing error to them? Do the defendants mean to say, that this is imputing nothing but error? Do they mean to say, that they were giving them an opportunity of correcting that error, by submitting to them a discussion of the facts, and affording them the means and opportunity of answering the charge against them? but, after these two first libels, you see there is a third,—“When public indignation is excited at the conduct of an inhuman individual,—when the horrid acts of that individual are established by the clearest concurring testimony, the plain steps that a jury have to pursue, is, to follow the natural instinct of their hearts and understanding; and, by deciding in conformity, they still keep elevated the opinion of the impartial and retributive mode, Trial by Jury.” Not a word here of any doubts as to the guilt of the parties.—it is taken for granted. He goes on, “but when, contrary to all expectation, their decisions give liberty to such inhuman monsters,—when they seemingly set at defiance the clamorous calls of justice and huma-

nity, the public indignation, though doubtless unavailing, cannot be altogether overwhelmed by the impetuous torrent of judicial corruption.” Here is not a word of deputy Loveland, as was pretended by the counsel for the defendants; but the verdict which is arraigned is imputed generally to judicial corruption, and this is the libel upon which you are desired to put this construction, that it is a mere statement of the facts submitted to the jury, and of the conclusions which the writer draws from those facts. Now, in the first place, there is no statement of the facts; in the second place, there is no discussion even of the supposed facts; and, in the third place, so far from pointing out to the jury that they had proceeded on error of judgment, their conduct is in express terms imputed to judicial corruption. I know not, gentlemen, whether it is necessary for me to add any thing to show the absurdity of this defence. It is said that nothing more is imputed to the jury than error. This is the language they hold by their counsel to you, and they say they only wish to correct that error. Now I will just read one passage more. Speaking of the alleged murder of the boy by Chapman, the libel says, “To you, gentlemen, with his last departed groan, he committed (while hope cast a momentary smile upon his visage) his individual cause and the cause of humanity. I appeal, then, to a discerning public, even to your own hearts will I appeal, whether you have done your duty as Englishmen, as jurymen. I here pause:—I fancy I see the blush of conscious error and unworthiness overspread your cheeks.” These are the words of the libel. In express terms unworthiness is imputed to the jury as well as error; and, in the former part of the libel, the charge is judicial corruption. Under these circumstances, I feel that I have detained you too long.

I think this case is of great importance:—it is of the last importance to the public, that the administration of justice should be pure and uncorrupt—it never can be so unless the conduct of juries is left to the guidance of their own consciences—to impute misconduct to them in their judicial character is to impute to them the greatest possible crime—it is a violation of their oaths, and of every duty which they owe to the public, to the individuals concerned, and to themselves.—If once an opinion prevails that they are to be attacked in this brutal way for the verdicts they may give—if they are to be held out to public abhorrence and detestation, because they have followed that which ought to be their only guide—the light of their own consciences—it is not to be expected that they will not be swayed in the judgments they may give, and deterred from doing their duty, lest they should afterwards be exposed and held up as objects of public detestation by the editor of some newspaper.—But shall

we suffer them to be so exposed?—Shall we suffer an individual to inveigh against the judge who presides and the jury who decide on the lives of their fellow-subjects?—Shall we suffer any man to impute to the judge and jury the most unjustifiable and criminal conduct, and allow him to tell you, in his defence, when he is judicially called upon to answer, that he only meant to impute error, and that his object was, to discuss the case fairly, deliberately, and coolly, on a full view of the facts?—You have it, on the admission of the defendants own counsel, that the acquittal, in the first instance, depended upon the effect of the evidence; and, in the second, that it depended upon the credit which was due to the witnesses; and no where have you, in these libels, the facts which were proved in the one case, or the evidence which induced the jury in the other to disbelieve the witnesses. Under these circumstances, you will arrive at that conclusion at which every man in court has arrived. You will find that the object of these publications was, in the language of the record, to bring into contempt and to disgrace the administration of justice and the trial by jury; and that, having been published with the intention charged in the information, they are gross and scandalous libels.

SUMMING-UP.

Mr. Justice *Grose*.—Gentlemen of the jury;—This is an information filed by his majesty's attorney-general, charging the two defendants with having printed and published the libels you have heard read, for the purpose of bringing into contempt the administration of justice and the trial by jury, as established by law in this country; and they are charged to be libels as well upon the judge as upon the jury; for, there can be no doubt, that in these libels which have been read to you, there are parts which reflect on the administration of justice by the judge as well as by the jury. The two questions you have to try are these:—first, whether these publications have been issued, whether they have been made public by the defendants or either of them; and in the next place—which seems to be the main ground on which the defence is rested—whether, when published, they were published innocently or with a libellous intention; whether for the purpose of discussing fairly and candidly the circumstances of the cases of Bennett and the other man, or whether for the purpose of libelling the administration of justice in the country, and of bringing into contempt the trial by jury.

With respect to the first point, *i. e.* the publication, I do not know that I need read to you the evidence, for, no comment or observation has been made by the gentleman at the bar that goes to deny that there has been fair evidence of the fact of publication, and I think there is fair evidence for you to say there has been in this case a publication by

these persons; in truth there is an act of parliament which has been referred to, and which directs the mode of proof; and the provisions of that act having been complied with in this case, it seems to me that the publication has been proved against both the defendants; however, it is for you to judge of that fact, as it is of every other fact in proof before you; but in their defence nothing is said to show that these defendants are not guilty of the publication.

The great and main point of the defence is with respect to the publications themselves, and the motives and intentions by which the defendants were actuated; for, it is said, and very truly, that, by a recent act of parliament, the whole matter in issue in a case of libel is to be left to your consideration. Gentlemen, that is so: the act of parliament recites, "that doubts have arisen, whether, on the trial of an indictment or information for the making or publishing any libel where an issue or issues are joined between the king and the defendant, or defendants, on the plea of not guilty pleaded, it be competent to the jury, impanelled to try the same, to give their verdict upon the whole matter in issue." The act of parliament then directs, "that on every such trial, the jury sworn to try the issue, may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed by the Court or judge, before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants, of the paper charged to be a libel, and of the sense ascribed to the same, in such indictment or information; provided always that on every such trial, the Court or judge, before whom such indictment or information shall be tried shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the king and the defendant or defendants, in like manner as in other criminal cases." Then, gentlemen, it being indisputably one of the provisions of this act, and it being required that the Court should give you, in its directions, its opinion, whether the matter be libellous or not, I have no difficulty in stating, that, looking at these papers published by the defendants—if you find them to have been so published with the intention of imputing to the judge who presided, and the jury who gave their verdict, what is therein stated—I have no hesitation in saying they are very gross libels; and I think you will have no doubt of that yourselves, when you come to consider what are the charges contained in them.

One of these letters is addressed to the editor of the Independent Whig. It states, that the professions he had invariably made to the public, as editor of the Whig, as well as under the signature of Crito, would, the writer

hoped, animate his pen on the subject of the late trials for three murders at the Old Bailey—the former, for the cruel, systematic, and gradual torturing to death a poor sick boy, was bad enough, God knew—but the last eclipsed every thing before recorded. Then, gentlemen, in another part, the verdict of the jury is said to have been received with general surprise and indignation, and to have excited unequivocal marks of discontent; and in another part the learned judge is addressed in these terms: “Be not deceived, nor lay that flattering unction to your soul, that these horrible and atrocious acts will elude the inquiring gaze of public observation.” Then he says, “No, my lord, our laws and constitution, the tribunals and jurisprudence of England, have received a wound that threatens their destruction.” How was it to threaten their destruction? Why, by justice having been administered in the way stated in these libels in the cases of the men who had been tried and acquitted. Then he says—“The Magna Charta and Bill of Rights have been almost rendered useless and abolished—the lives and personal safety of individuals have been made the wanton sport of brutal malice; and the chief security and best blessing of our immortal Alfred, the trial by jury, has been perverted and destroyed.”

Now surely, gentlemen, a grosser libel upon the trial by jury cannot be published; and when such language as this is made use of, it in reality reflects, and is intended to reflect, not only on the judge who presided at the trial, but on the jury, who, under his direction, gave their verdict.—The libel consists in this;—that the laws and the tribunals of the land are represented as having, by the conduct of the judge and the jury in the administration of the laws, received a wound which threatens their destruction—Magna Charta and the Bill of Rights are represented as almost abolished, or rendered useless, and the trial by jury is represented as having been perverted and destroyed;—and all this is described as the fruit and effect of judicial corruption.—Then, gentlemen, when you find such reflections as these in a publication, I think it can require but very little argument, to convince you, it is a libel on the judge and jury.—The libel alleges, that the corruption must have originated with the judge, and was afterwards adopted by the jury.

Now, gentlemen, upon looking farther into these papers, it does, I own, seem to me, that a more severe or a more deliberate libel on the laws of the country, and administration of them, can not exist;—but you are told, that, in reality, it was not the intention of these defendants to libel either the judge or the jury—that certainly is the question for you to try—you are undoubtedly, to consider, whether it was the intention of the two defendants to discuss fairly and candidly the grounds of the acquittals to which they referred, or whether it was not their in-

tention, without discussing those grounds, to malign and vilify the administration of justice in this country, and in reality to cast upon it the severest stigma which could be affixed to it.—You have heard a great deal said with respect to this on the one side, and on the other, and it seems to me, that when you consider the observations that have been made on this subject on the part of the prosecution, they must appear to you as they do to me, altogether unanswerable.—There does not appear to be any attempt to discuss the facts, as they came out in evidence on the trial:—on the contrary, here is nothing put forth but wholesale abuse of the administration of the justice of the country both with reference to the judge who presided, and the jury, who, under his directions, found the verdict. If, therefore, viewing the whole of the libels, you are satisfied they proceeded from an intention to slander the administration of justice, and not from that of arguing the merits of the case, and discussing whether, upon the evidence, the two persons who had been acquitted, were properly so acquitted; then I think these two defendants are guilty of the offence imputed to them on this record.—It should seem, the fact of publication has been clearly made out—it has not been denied:—if, however, you are of a contrary opinion, and should think the fact of publication has not been clearly proved, then you will say that the defendants are both not guilty;—if you are of opinion, that what has been published is not a libel, you will then also find them not guilty;—but if you should be of opinion, that the publication has been proved, and that it is libellous, you will then have to determine that which is the great question in this case, namely, whether the publication was with the intention to defame, traduce, vilify, and subvert the administration of justice in the way it has been administered on the occasions to which the libels refer,—I mean the trials of Chapman and Bennett;—if, from what you have heard, you are satisfied, that such in reality was the intention of the defendants; if you are convinced, that their object was, to destroy the trial by jury, and to defame and disgrace the administration of justice, you will of course say they are guilty.—If you can find any fair reasonable ground, that these papers were intended merely as a public discussion whether these men, who had been tried at the Old Bailey and acquitted, were properly acquitted or not, then you will say, they are not guilty;—but you will consider, that if such was their intention the fair and proper mode would have been to have taken all the circumstances of the case, on the one side as well as on the other, into consideration, and to have drawn the conclusion from the evidence on both sides.—This has not been done—it is not attempted, neither is it affected to be done; but the defendants, without discussing or entering into the merits of the question, have

contented themselves with assuming certain facts, and then introducing one general sweeping libel, by way of commentary on the facts falsely assumed by themselves.

If, therefore, you believe, in reality, that it was the intention of these defendants to libel the learned judge, you will say they are guilty;—if you are of opinion that it was their intention to libel the jury, you will say they are guilty. If you believe it was their intention to libel the administration of the justice of the country, and not to discuss the propriety of the verdicts which have been given, you will also in that case find them guilty. If you think the papers were published with no other view than that of discussing the propriety of these verdicts, you will of course find them not guilty; yet one cannot conceive how such could have been their intention; for you find that all the facts were not clearly brought before the public by those who pretended to discuss the question.—It is for you, however, to determine on the whole

of the matter—if you think it probable that these papers were published by the defendants for a fair and proper purpose, you will say they are not guilty. If, on the contrary, you think it was only their intention to throw a stigma on the administration of justice, as it was administered by the jury under the direction of the judge, in that case you will say they are guilty. You will consult together, and consider of your verdicts.

Foreman of the Jury.—May we have a copy of these papers—May we be allowed to take them out of Court with us?

Mr. Justice Grose.—Certainly, gentlemen. You may take with you whatever will assist you in returning your verdict.

The Jury retired, and were absent about twenty minutes; upon their return into court, Mr. Lowten addressing them said, “How say you, gentlemen, are John Harriott Hart and Henry White, Guilty or Not Guilty?”

Foreman of the Jury.—“GUILTY.”

680. Proceedings on the Trial of an Information filed by his Majesty's Attorney General against JOHN HARRIOTT HART and HENRY WHITE, for certain Libels upon the administration of Justice in England, and upon the Right Hon. Edward Lord Ellenborough, Lord Chief Justice of his Majesty's Court of King's-Bench: tried before the Hon. Sir NASH GROSE, Knight, one of the Judges of his Majesty's Court of King's-Bench and a Special Jury, on Saturday, June 25: 48 GEORGE III. A. D. 1808.*

IN THE KING'S-BENCH.

The KING
against

JOHN HARRIOTT HART and HENRY WHITE.

Court of King's-Bench, Guildhall, Saturday,
June 25th, 1808.

THE JURY.

Samuel Hadley, Swithin's-lane, merchant,
Foreman.
John Barton, Mark-lane, merchant.
Henry Foster, Billiter-lane, merchant.
Martin Foster, Philpot-lane, merchant.
William Hodgson, Aldermanbury, merchant.
William Whitworth, Cornhill, merchant.
Benjamin Hutton, Angel-court, Friday-st.
merchant.

John Parker, Broad-street, merchant.
Henry Ward, Bread-street, merchant.
Thomas Rich. Watson, Bread-street-hill,
merchant.
Thomas Ruff, Two-Swan-yard, coach-master.
Joseph Gould, Moorfields, fishmonger.

The Information was opened by Mr. Richardson; it was as follows:

OF HILARY TERM 48th Geo. 3 1808.

London } BE it remembered that sir
to wit. } Vicary Gibbs knight attorney-general of our present sovereign lord the king who for our said lord the king in this behalf prosecutes in his own proper person comes here into the court of our said lord the king before the king himself at Westminster on Thursday next after the Octave of the Purification of the Blessed Virgin Mary in this same term and for our said lord the king giveth the

* See the preceding Case.

Court here to understand and be informed that before and at the respective times of the printing and publishing the several scandalous malicious and defamatory libels hereinafter mentioned the right honourable Edward lord Ellenborough was and continually since hitherto hath been and still is the chief justice of our said lord the king assigned to hold pleas before the king himself and also a peer and lord of the parliament of this kingdom to wit at London in the parish of St. Mary-le-Bow in the ward of Cheap and that heretofore to wit on the second day of December in the 48th year of the reign of our sovereign lord George the third of the United Kingdom of Great Britain and Ireland king at the Guildhall of the city of London a certain action of trespass and assault then depending in the court of our said lord the king before the king himself wherein one Thomas Boyce was the plaintiff and one Thomas Gabriel Bayliffe was the defendant was tried by a jury of the said city of London before the aforesaid Edward lord Ellenborough then and still being the chief justice aforesaid at and upon which said trial the said jury found and gave their verdict for the said Thomas Boyce against the said Thomas Gabriel Bayliffe and assessed damages to the said Thomas Boyce over and above his costs and charges by him about his suit in that behalf expended to 80*l*. And the said attorney-general for our said lord the king giveth the Court here further to understand and be informed that John Harriott Hart late of London printer and Henry White late of the same place gentleman well knowing the premises but being malicious and ill-disposed persons and unlawfully and maliciously devising and intending to bring the administration of justice in England into hatred and contempt among the liege subjects of our said lord the king and to raise and excite disaffection and discontent in the minds of the liege subjects of our said lord the king and also to traduce defame and vilify the said Edward lord Ellenborough so being such chief justice as aforesaid and a peer and lord of the parliament as aforesaid and to bring him into great and public hatred and contempt afterwards to wit on the 20th day of December in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published certain scandalous malicious and defamatory libels of and concerning the aforesaid trial and the verdict aforesaid and also of and concerning the said Edward lord Ellenborough as such chief justice as aforesaid and the conduct of the said Edward lord Ellenborough

as such chief justice as aforesaid at the said trial one of which said scandalous malicious and defamatory libels is according to the tenor and effect following (that is to say)

“To the Right Hon. Edw. Lord Ellenborough, the Lord Chief Justice of His Majesty’s Court of King’s-bench” &c. &c. &c. (meaning the aforesaid Edward lord Ellenborough) “My lord” (meaning the said Edward lord Ellenborough) “The magnitude and importance of the subject to which I request your most serious and immediate attention, must furnish a sufficient apology for thus personally addressing your lordship. The two most valuable and perhaps only remaining, securities for the rights and liberties of Englishmen, are, unquestionably, the trial by jury, and the freedom of the press. So long as the administration of justice continues pure and undefiled, and the wrongs and injuries of a suffering people experience full and adequate redress; so long as the public functionaries of our assemblies of legislature and courts of jurisprudence be open to free examination and inquiry, so long, my lord, and no longer, may the people of this country be justly considered as safe from the gigantic strides of despotism, and the encroachments of arbitrary oppression. Impressed with this salutary conviction, I feel it a positive right, so well as an imperious duty, to rouse the vigilant attention of my fellow countrymen to the late proceedings in their courts of justice, to call publicly upon your lordship” (meaning the said Edward lord Ellenborough) “for satisfactory explanation respecting a case that recently came under your cognizance, and was submitted to your jurisdiction,” (meaning the said trial of the said action) “to examine freely but respectfully the force and validity of the observations that have been attributed, falsely, I hope, attributed, to your lordship,* and clearly demonstrate their evil tendency and pernicious consequences to the public at large. My lord, it is essential not only to the national safety, but to the security of every individual subject, that the man who is entrusted to preside over the tribunals of England should be eminently distinguished for inflexible integrity and uncorrupted virtue: that he should rise superior to all selfish considerations or party views, and that the promulgation of his opinions from the judgment-seat, should place his character in the most exalted point of view as the avowed enemy of corruption and the friend of public justice.

“I had intended, my lord, that these preliminary reflections should have been accompanied by a few remarks on the

peculiar hardships and unprecedented circumstances attendant on the case of a Mr. William Dickie, who is now suffering all the aggravated horrors of a perpetual imprisonment merely upon a civil action of debt! but a desire to obtain complete information on the subject, and the present instance appearing to require more immediate attention, I shall suspend my observations, and confine myself to the case before me.

"My lord, a most shameful and wanton outrage on the personal freedom of an English subject has been committed by a brutal ruffian, and the complainant appeals to a British tribunal for indemnification and redress; the case is completely proved, as well by the concurrent testimony of the most respectable witnesses in behalf of the plaintiff," (meaning the said Thomas Boyce) "as by the cross-examination of those on the part of the defendant" (meaning the said Thomas Gabriel Bailiffe.)—"The circumstances are shortly these: the plaintiff" (meaning the said Thomas Boyce), "who had formerly resided in India, and filled an important situation in his majesty's army, was returning to Europe, as a passenger in a vessel under the command of the defendant" (meaning the said Thomas Gabriel Bailiffe) "with his daughter, a child of eight years of age; and, during the early part of the voyage, had enjoyed unmolested the privilege of occupying the poop, and taking his recreation there with the superior officers and passengers. On a sudden, however, without any cause assigned, he" (meaning the said Thomas Boyce) "is debarred from this enjoyment by the defendant" (meaning the said Thomas Gabriel Bayliffe) "and compelled to retire with his daughter to another part of the vessel. The terms in which the prohibition is conveyed, are of the most insulting and degrading nature. The defendant" (meaning the said Thomas Gabriel Bailiffe) calls out to the mate to 'take that fellow from the quarter deck and never let him come there again!' the plaintiff" (meaning the said Thomas Boyce) "is, accordingly, ordered to quit the poop; he retires without any hesitation, and from that time confines himself in a more retired and private part of the vessel. Soon after, an alarm being given of some strange vessels in sight, which are mistaken for an enemy, the defendant" (meaning the said Thomas Gabriel Bayliffe) "calls over the names of all the passengers, orders them to their respective quarters, and commands the plaintiff" (meaning the said Thomas Boyce) "to take his station at the poop. The latter" (meaning the said Thomas Boyce) "refuses to obey this order, not

choosing to return to the situation whence he had been so ignominiously driven. He at the same time professes his readiness to fulfil his duty in any other situation. The defendant" (meaning the said Thomas Gabriel Bailiffe) "immediately calls out, 'Here, take this d——d rascal, and put him'" (meaning the said Thomas Boyce) "'in irons!'"

"This brutal and ferocious order is instantaneously obeyed, and a British subject and a freeman is loaded with fetters, and exposed on the poop to the insulting derision of the crew, and the inclemency of a cold night! For this outrage, and for indemnification for the expense of his removal from a vessel where he could no longer with safety or prudence continue, he" (meaning the said Thomas Boyce) "returns to England in another, and seeks for reparation in a British court of justice. The British public, my lord," (meaning the said Edward lord Ellenborough) "will be amazed to learn, that, after a recital of this atrocious offence, and a full and complete proof of the truth of the accusation, that, under the direction, and upon hearing the concluding remarks of the lord chief justice of England" (meaning the said Edward lord Ellenborough) "an English Jury," (meaning the aforesaid jury) "feeling, no doubt, for the wounded honour and insulted rights of an injured fellow-countryman, award damages to the extraordinary amount of—(I blush to name them) eighty-pounds!!! The public must certainly be at a loss, my lord, to account for the excessive lenity of this singular verdict, especially when they contrast it with the case of Dickie, where, merely for words spoken at a common alehouse over his cups, and possibly not quite in his sober senses, a verdict was given for seven-hundred pounds; and the unhappy culprit, in consequence of his inability to pay the penalty of his offence, and even in spite of the forbearance of the aggrieved party, is doomed to end his days in a jail!!! But our surprise will be materially diminished and our apprehensions increased when we peruse your" (meaning the said Edward lord Ellenborough's) "concluding observations:—we are told, in the printed statement of this remarkable trial, that your lordship" (meaning the said Edward lord Ellenborough) "was pleased to observe, that 'in this case, neither party had been entirely free from blame!' and we are naturally led to inquire of your lordship, what part of the plaintiff's" (meaning the said Thomas Boyce's) "conduct was deserving of reprehension? you acknowledge that he had been, 'rudely driven from the poop;' and without any as-

signable cause or alleged misconduct deprived of his usual comforts of exercise and recreation; you assert that 'the defendant' (meaning the said Thomas Gabriel Bayliffe) "had the strict right of withdrawing his indulgence if he thought proper, while you, at the same time, deny the exercise of a similar right to the plaintiff" (meaning the said Thomas Boyce) "to withhold his assistance from a wretch who had publicly treated him with gross indignity and contempt, in a case too of extreme personal danger, where he was bound by no moral sympathy or legal obligation! You" (meaning the said Edward lord Ellenborough) "are reported to have said, that 'the plaintiff'" (meaning the said Thomas Boyce) "'falsely consulted the suggestions of his wounded pride! Good God! my lord! is that delicacy of sentiment, that acuteness of feeling, that nice sense of honor, that decent pride, which preserves men honest amidst the raging temptations of surrounding vice and folly, and nourishes in their bosoms the noble principles of freedom and independence—is this, the safeguard, and often the substitute, of all our other virtues, which resents an open insult as a serious injury, and learns to practise the useful lessons of forbearance, out of respect for the rights of others, to be thus misrepresented, undervalued, and despised? Upon what principle, my lord'" (meaning the said Edward lord Ellenborough) "either of law or justice, was this injured gentleman" (meaning the said Thomas Boyce) "bound to expose his life, and hazard the ruin of his helpless daughter, who could look to her parent alone for protection and support? was he enrolled or registered as one of the crew? Did he receive the wages of a soldier or a seaman, or had he any share or concern in the property or merchandise of this vessel?—None. He was a private passenger, coming peaceably over to England, for the laudable purpose of educating his only daughter, and claimed the common rights of hospitality and decorum! My lord, the details of this trial" (meaning the aforesaid trial) "have filled me with horror and indignation!—Be assured that the public mind is steadily fixed on the character and conduct of the present lord chief justice of England" (meaning the said Edward lord Ellenborough) "and regards them with an eye of suspicion and alarm!—The increasing frequency of duels in this country can excite no surprise, when we reflect that an opinion appears to be rapidly gaining ground (an opinion which I trust is ill-founded) that private injuries have of late been seldom compensated

by public reparation; that the sufferings and grievances of individuals have become subjects of banter, and ridicule; that the characters of witnesses have been assailed, and their testimony confused and perverted by the gross calumnies and vulgar witticisms of babbling pleaders, and pettifogging attornies, and that men, therefore, rather choose to become the arbiters and judges of their own causes and quarrels, than seek in vain for a tardy or ineffectual redress from a public court of justice!—The consequences to a man of your lordships penetration and discernment need not be pointed out. Think of them seriously and at your leisure; and, for the present, my lord, farewell.

"Dec. 18, 1807.

JUNIUS."

"* The Editor thinks it but proper here to remind the reader that the plaintiff upon the trial" (meaning the aforesaid trial) "stated, that, in consequence of the usage he had received, he was compelled to go on shore at St. Helena, whence to obtain his passage to England, he was obliged to pay 100 guineas! and to an English subject so circumstanced, a British jury, in a trial" (meaning the aforesaid trial) "at which the lord chief justice of England" (meaning the said Edward lord Ellenborough) "presides, for an outrage upon his personal feelings the most indignant and scandalous that could be offered, award the liberal damages of 80*l*.!!!" And the other of which said scandalous malicious and defamatory libels is according to the tenor and effect following (that is to say)

"To the Editor of the Independent Whig.

"Dec. 12th, 1807.

"Sir;—I have read a report of a trial" (meaning the aforesaid trial) "in the Morning Post and Morning Chronicle of this date, before lord chief justice Ellenborough" (meaning the said Edward lord Ellenborough) "and, if that report be correct, it is full time that the doctrines and decisions of that personage should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship. He" (meaning the said Edward lord Ellenborough) "has upon several occasions announced a bias so very strong towards arbitrary power, that I have been led to suppose it was in the latter end of the reign of James the second, and not of George the third, (the father of his people) that I was living. Impunity gives boldness; and it is perhaps owing to the silence of the public on the animadversions and ad-

dresses of our judges to the jury of late years, that the promulgation of principles subversive of our rights has been carried to a very censurable extent. I know nothing of the parties in question; I know, indeed, that captains of Indiamen are apt to fancy themselves great men, and to exercise an authority indecent and illegal. In the present instance the public prints state, that a man" (meaning the said Thomas Boyce) "and his daughter have taken a passage on board of a ship in India for Europe; a valuable consideration is given to the captain who, of course, becomes a kind of stage coachman, innkeeper and vintner to the passenger, who has a stronger claim to good manners and attention from this coachman and innkeeper, on account of the exorbitant sum which is generally exacted for his bed and board. In this case, the ship is neither more nor less than a travelling public-house, like one of the trechtschuyts on the canals in Holland and Flanders, the skippers of which furnish meat and drink, at stated not arbitrary prices, to their respective passengers. The Dutchmen do not give any goodwill for the command entrusted to them, but the skippers of our English passage vessels to and from India, give from 8 to 10,000*l.* some say 12,000*l.* goodwill; of course this enormous sum, and no doubt with enormous interest, must be reimbursed to them; and how is it reimbursed? by carrying, like stage coaches, parcels and passengers, by fair trade, and by smuggling.—The captain whom I pay for my passage is to me no other than a stage coachman, and can have no more right to exercise authority over me, than an Innkeeper has to dictate to his guests. Lord Ellenborough" (meaning the said Edward lord Ellenborough) "seems to think very lightly of an Englishman being confined several hours in irons by the impudent mandate of a man hired to behave civil to the person whom he insults and degrades. Lord Ellenborough" (meaning the said Edward lord Ellenborough) "feels nothing for the wounded sensibility of a female, the daughter of the injured party. I suppose his lordship" (meaning the said Edward lord Ellenborough) "is not a father,—I should almost question his" (meaning the said Edward lord Ellenborough's) "ever having been a son, if there had been any other mode of coming into existence. If the passenger" (meaning the said Thomas Boyce) "had behaved ill, which does not appear, I doubt whether the captain" (meaning the said Thomas Gabriel Bayliffe) "could legally forbid him to walk in any open and

public part of the vessel; and his doing this was an affront which would have authorised the offended person to have chastised him the first opportunity he met him on shore. To order him, after this, to the spot whence he had excluded him, was insolent and tyrannical, and it much grieves me to find a conduct so flagitious even palliated by the chief justice of England" (meaning the said Edward lord Ellenborough.)

"A SEAMAN."

—*To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* In contempt of our said lord the king and his laws To the evil example of all others and against the peace of our said lord the king his crown and dignity.

Second Count.—And the said attorney-general of our said lord the king giveth the Court here further to understand and be informed that the said John Harriott Hart and Henry White so being such persons as aforesaid and again unlawfully and maliciously devising and intending as aforesaid heretofore to wit on the 20th day of December in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the aforesaid trial and also of and concerning the said Edward lord Ellenborough as such chief justice as aforesaid containing therein (amongst other things) divers scandalous malicious and defamatory matters and things of and concerning the aforesaid trial and also of and concerning the said Edward lord Ellenborough as such chief justice as aforesaid according to the tenor and effect following (that is to say)

"I have read a report of a trial" (meaning the aforesaid trial) "in the Morning Post and Morning Chronicle of this date, before lord chief justice Ellenborough" (meaning the said Edward lord Ellenborough); "and if that report be correct, it is full time that the doctrines and decisions of that personage" (meaning the said Edward lord Ellenborough) "should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship. He" (meaning the said Edward lord Ellenborough) "has upon several occasions announced a bias so very strong towards arbitrary power, that I have been led to suppose it was in the latter end of the reign of James the 2nd, and not of George

the 3rd (the father of his people), that I was living; impunity gives boldness, and it is perhaps owing to the silence of the public on the animadversions and addresses of our judges to the jury of late years, that the promulgation of principles subversive of our rights has been carried to a very censurable extent"

—*To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* In contempt of our said lord the king and his laws To the evil example of all others and against the peace of our said lord the king his crown and dignity.

Third Count.—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White so being such persons as aforesaid and again unlawfully and maliciously devising and intending as aforesaid heretofore to wit on the 20th day of December in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published certain other scandalous malicious and defamatory libels of and concerning a certain supposed action and of and concerning a trial thereof in and by the said last-mentioned libels surmised to have been then lately had before the said Edward lord Ellenborough as such chief justice as aforesaid and the verdict supposed to have been given at such supposed trial and also of and concerning the said Edward lord Ellenborough as such chief justice as aforesaid and the conduct of the said Edward lord Ellenborough as such chief justice as aforesaid at the said supposed trial one of which said last-mentioned scandalous malicious and defamatory libels is according to the tenor and effect following (that is to say)

"To the Right Hon. Edward Lord Ellenborough," (meaning the said Edward lord Ellenborough), "the Lord Chief Justice of his Majesty's Court of King's Bench, &c. &c. &c."

"My lord;" (meaning the said Edward lord Ellenborough)—"The magnitude and importance of the subject to which I request your most serious and immediate attention, must furnish a sufficient apology for thus personally addressing your lordship. The two most valuable, and perhaps only remaining securities for the rights and liberties of Englishmen, are, unquestionably, the Trial by Jury, and the Freedom of the Press. So long as the administration of justice continues pure and undefiled, and the wrongs and injuries of a suffer-

ing people experience full and adequate redress; so long as the public functionaries of our assemblies of legislature, and courts of jurisprudence be open to free examination and inquiry; so long, my lord, and no longer, may the people of this country be justly considered as safe from the gigantic strides of despotism, and the encroachments of arbitrary oppression. Impressed with this salutary conviction, I feel it a positive right, so well as an imperious duty, to rouse the vigilant attention of my fellow-countrymen to the late proceedings in their courts of justice, to call publicly upon your lordship" (meaning the said Edward lord Ellenborough) "for satisfactory explanation respecting a case that recently came under your cognizance, and was submitted to your jurisdiction, to examine freely but respectfully the force and validity of the observations that have been attributed, falsely I hope attributed, to your lordship,* and clearly demonstrate their evil tendency and pernicious consequences to the public at large. My lord, it is essential not only to the national safety, but to the security of every individual subject, that the man who is entrusted to preside over the tribunals of England should be eminently distinguished for inflexible integrity and uncorrupted virtue; that he should rise superior to all selfish considerations or party views, and that the promulgation of his opinions from the judgment seat should place his character in the most exalted point of view, as the avowed enemy of corruption and the friend of public justice. I had intended, my lord, that these preliminary reflections should have been accompanied by a few remarks on the peculiar hardships and unprecedented circumstances attendant on the case of a Mr. Wm. Dickie, who is now suffering all the aggravated horrors of a perpetual imprisonment merely upon a civil action of debt!! but a desire to obtain complete information on the subject, and the present instance appearing to require more immediate attention, I shall suspend my observations and confine myself to the case before me.

"My lord, a most shameful and wanton outrage on the personal freedom of an English subject has been committed by a brutal ruffian, and the complainant appeals to a British tribunal for indemnification and redress. The case is completely proved, as well by the concurrent testimony of the most respectable witnesses in behalf of the plaintiff" (meaning the plaintiff in the said supposed action), "as by the cross-examination of those on the part of the defendant" (meaning the defendant in the said sup-

posed action). "The circumstances are shortly these: The plaintiff" (meaning the plaintiff in the said supposed action) "who had formerly resided in India, and filled an important situation in his majesty's army, was returning to Europe, as a passenger in a vessel under the command of the defendant" (meaning the defendant in the said supposed action) "with his daughter, a child of eight years of age; and during the early part of the voyage had enjoyed unmolested the privilege of occupying the poop, and taking his recreation there with the superior officers and passengers. On a sudden, however, without any cause assigned, he" (meaning the plaintiff in the said supposed action) "is debarred from this enjoyment by the defendant" (meaning the defendant in the said supposed action), "and compelled to retire with his daughter to another part of the vessel. The terms in which the prohibition is conveyed are of the most insulting and degrading nature. The defendant" (meaning the defendant in the said supposed action) "calls out to the mate to 'take that fellow from the quarter-deck, and never let him come there again!' The plaintiff" (meaning the plaintiff in the said supposed action) "is accordingly ordered to quit the poop; he retires without any hesitation, and from that time confines himself in a more retired and private part of the vessel. Soon after, an alarm being given of some strange vessels in sight, which are mistaken for an enemy, the defendant" (meaning the defendant in the said supposed action) "calls over the names of all the passengers, orders them to their respective quarters, and commands the plaintiff" (meaning the plaintiff in the said supposed action) "to take his station at the poop. The latter refuses to obey this order, not choosing to return to the situation whence he had been so ignominiously driven. He at the same time professes his readiness to fulfil his duty in any other situation. The defendant" (meaning the defendant in the said supposed action) "immediately calls out, 'Here take this d—d rascal and put him in irons.' This brutal and ferocious order is instantaneously obeyed, and a British subject and a freeman is loaded with fetters and exposed on the poop to the insulting derision of the crew, and the inclemency of a cold night! For this outrage and for indemnification for the expense of his removal from a vessel where he could no longer with safety or prudence continue, he" (meaning the plaintiff in the said supposed action) "returns to England in another, and seeks for reparation in a British court of justice! The British public, my lord," (meaning the said Ed-

ward lord Ellenborough) "will be amazed to learn, that, after a recital of this atrocious offence, and a full and complete proof of the truth of the accusation, that under the direction, and upon hearing the concluding remarks of the lord chief justice of England" (meaning the said Edward lord Ellenborough) "an English jury, feeling no doubt for the wounded honor and insulted rights of an injured fellow-countrymen, award damages to the extraordinary amount of —(I blush to name them!)—eighty pounds!!!* The public must certainly be at a loss, my lord, to account for the excessive lenity of this singular verdict; especially when they contrast it with the case of Dickie, where merely for words spoken at a common ale-house over his cups, and possibly not quite in his sober senses, a verdict was given for seven hundred pounds; and the unhappy culprit, in consequence of his inability to pay the penalty of his offence, and even in spite of the forbearance of the aggrieved party, is doomed to end his days in a gaol!!! But our surprise will be materially diminished and our apprehensions increased when we peruse your" (meaning the aforesaid Edward lord Ellenborough's) "concluding observations. We are told, in the printed statement of this remarkable trial, that your lordship" (meaning the said Edward lord Ellenborough) "was pleased to observe that 'in this case, neither party had been entirely free from blame!' And we are naturally led to inquire of your lordship, what part of the plaintiff's" (meaning the plaintiff in the said supposed action) "'conduct was deserving of reprehension,' you acknowledge that he had been 'rudely driven from the poop,' and, without any assignable cause or alleged misconduct, deprived of his usual comforts of exercise and recreation! You assert, that 'the defendant'" (meaning the defendant in the said supposed action) "'had the strict right of withdrawing his indulgence if he thought proper; while you, at the same time, deny the exercise of a similar right to the plaintiff'" (meaning the plaintiff in the said supposed action), "to withhold his assistance from a wretch who had publicly treated him with gross indignity and contempt, in a case too of extreme personal danger, where he was bound by no moral sympathy or legal obligation! You" (meaning the said Edward lord Ellenborough) "are reported to have said, that 'the plaintiff'" (meaning the plaintiff in the said supposed action) "'falsely consulted the suggestions of his wounded pride!' Good God! my lord! is that delicacy of sentiment, that acuteness of feeling, that nice sense of honour,

that decent pride, which preserves men honest amidst the raging temptations of surrounding vice and folly, and nourishes in their bosoms the noble principles of freedom and independence, is this, the safeguard and often the substitute of all our other virtues, which resents an open insult as a serious injury, and learns to practise the useful lessons of forbearance out of respect for the rights of others to be thus misrepresented, undervalued, and despised? Upon what principle, my lord" (meaning the said Edward lord Ellenborough), "either of law or justice was this injured gentleman" (meaning the plaintiff in the said supposed action) "bound to expose his life, and hazard the ruin of his helpless daughter, who could look to her parent alone for protection and support? Was he inrolled or registered as one of the crew? Did he receive the wages of a soldier or a seaman, or had he any share or concern in the property or merchandize of this vessel? None. He was a private passenger, coming peaceably over to England, for the laudable purpose of educating his only daughter, and claimed the common rights of hospitality and decorum! My lord," (meaning the said Edward lord Ellenborough) "the details of this trial" (meaning the said supposed trial) "have filled me with horror and indignation! Be assured that the public mind is steadily fixed on the character and conduct of the present lord chief justice of England," (meaning the said Edward lord Ellenborough) "and regards him with an eye of suspicion and alarm! The increasing frequency of duels in this country can excite no surprise, when we reflect that an opinion appears to be rapidly gaining ground (an opinion which, I trust, is ill-founded), that private injuries have of late been seldom compensated by public reparation; that the sufferings and grievances of individuals have become subjects of banter and ridicule; that the characters of witnesses have been assailed, and their testimony confused and perverted by the gross calumnies and vulgar witticisms of babbling pleaders and pettifogging attorneys; and that men, therefore, rather choose to become the arbiters and judges of their own causes and quarrels, than seek in vain for a tardy or ineffectual redress from a public court of justice! The consequences to a man of your lordship's penetration and discernment need not be pointed out. Think of them seriously and at your leisure; and for the present, my lord, farewell. JUNIUS."

"Dec. 18th, 1807."

"The editor thinks it but proper here to remind the reader that the plaintiff"

(meaning the plaintiff in the said supposed action) "upon the trial" (meaning the said supposed trial) "stated, that in consequence of the usage he had received, he was compelled to go on shore at St. Helena, whence to obtain his passage to England, he was obliged to pay 100 guineas! and to an English subject so circumstanced, a British jury in a trial" (meaning the said supposed trial) "at which the lord chief justice of England" (meaning the said Edward lord Ellenborough) "presides, for an outrage upon his personal feelings, the most indignant and scandalous that could be offered, award the liberal damages of 80l.!!!" And the other of which said last-mentioned scandalous malicious and defamatory libels is according to the tenor and effect following (that is to say)

"To the Editor of the Independent Whig.

"December 12th, 1807.

"Sir; I have read a report of a trial" (meaning the said supposed trial) "in the Morning Post and Morning Chronicle of this date, before lord chief justice Ellenborough" (meaning the said Edward lord Ellenborough); "and if that report be correct, it is full time that the doctrines and decisions of that personage should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship. He" (meaning the said Edward lord Ellenborough), "has upon several occasions announced a bias so very strong towards arbitrary power, that I have been led to suppose it was in the latter end of the reign of James the second, and not of George the third (the father of his people), that I was living. Impunity gives boldness, and it is, perhaps, owing to the silence of the public on the animadversions and addresses of our judges to the jury of late years that the promulgation of principles subversive of our rights has been carried to very censurable extent. I know nothing of the parties in question; I know, indeed, that captains of Indiamen are apt to fancy themselves great men, and to exercise an authority indecent and illegal. In the present instance, the public prints state, that a man" (meaning the plaintiff in the said supposed action), "and his daughter have taken a passage on board of a ship in India for Europe. A valuable consideration is given to the captain, who of course becomes a kind of stage-coachman, inn-keeper and vintner to the passenger, who has a stronger claim to good manners and attention from this coachman and inn-keeper, on ac-

count of the exorbitant sum which is generally exacted for his bed and board. In this case, the ship is neither more nor less than a travelling public-house, like one of the trecht-schuyts on the canals in Holland and Flanders, the skippers of which furnish meat and drink at stated, not arbitrary, prices to their respective passengers. The Dutchmen do not give any good-will for the command entrusted to them, but the skippers of our English passage vessels to and from India, give from eight to ten thousand, some say twelve thousand pounds, good-will; of course this enormous sum, and no doubt with enormous interest, must be reimbursed to them; and how is it reimbursed? By carrying, like stage-coaches, parcels and passengers, by fair trade and by smuggling. The captain whom I pay for my passage is to me no other than a stage-coachman, and can have no more right to exercise authority over me, than an inn-keeper has to dictate to his guests. Lord Ellenborough" (meaning the said Edward lord Ellenborough) "seems to think very lightly of an Englishman being confined several hours in irons, by the impudent mandate of a man hired to behave civil to the person whom he insults and degrades. Lord Ellenborough" (meaning the said Edward lord Ellenborough) "feels nothing for the wounded sensibility of a female, the daughter of the injured party. I suppose his lordship" (meaning the said Edward lord Ellenborough) "is not a father; I should almost question his" (meaning the said Edward lord Ellenborough's) "ever having been a son, if there had been any other mode of coming into existence. If the passenger" (meaning the plaintiff in the said supposed action) "had behaved ill, which does not appear, I doubt whether the captain" (meaning the defendant in the said supposed action) "could legally forbid him to walk in any open and public part of the vessel; and his doing this was an affront, which would have authorized the offended person to have chastised him the first opportunity he met him on shore. To order him after this to the spot whence he had excluded him, was insolent and tyrannical, and it much grieves me to find a conduct so flagitious, even palliated by the chief justice of England" (meaning the said Edward lord Ellenborough) "A SEAMAN." *To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

4th Count.—And the said attorney-ge-

neral of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said John Harriott Hart and and Henry White so being such persons as aforesaid and again unlawfully and maliciously devising and intending as aforesaid heretofore to wit on the 20th day of December in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said supposed action and of and concerning a trial thereof in and by the said last-mentioned libel surmised to have been then lately had before the said Edward lord Ellenborough as such chief justice as aforesaid and also of and concerning the said Edward lord Ellenborough as such chief justice as aforesaid containing therein (among other things) divers scandalous malicious and defamatory matters and things of and concerning the said supposed action and of and concerning the said supposed trial thereof and also of and concerning the said Edward lord Ellenborough as such chief justice as aforesaid according to the tenor and effect following (that is to say),

"I have read a report of a trial" (meaning the said supposed trial) "in the Morning Post and Morning Chronicle of this date, before lord chief-justice Ellenborough" (meaning the said Edward lord Ellenborough), "and if that report be correct, it is full time that the doctrines and decisions of that personage" (meaning the said Edward lord Ellenborough), "should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship. He" (meaning the said Edward lord Ellenborough) "has upon several occasions announced a bias so very strong towards arbitrary power, that I have been led to suppose it was in the latter end of the reign of James the second and not of George the third (the father of his people), that I was living. Impunity gives boldness; and it is, perhaps, owing to the silence of the public on the animadversions and addresses of our judges to the jury of late years, that the promulgation of principles subversive of our rights has been carried to very censurable extent."—*To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* in contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity

5th Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that before the printing or publishing of the scandalous malicious and defamatory libel hereinafter next mentioned one Thomas Aris impleaded one William Dickie in the Court of our said lord the king before the king himself for and upon certain scandalous words which the said Thomas Aris alleged to have been uttered and published by the said William Dickie of and concerning him the said Thomas Aris and such proceedings were thereupon had that afterwards and before the printing or publishing of the scandalous malicious and defamatory libel hereinafter next mentioned to wit in Trinity Term in the forty-third year of the reign of our said lord the king the said Thomas Aris by the consideration and judgment of the said Court recovered against the said William Dickie as well a certain sum of seven hundred pounds by a certain jury duly sworn and charged to enquire in that behalf assessed to the said Thomas Aris for his damages by him sustained by reason of the premises whereon he had so impleaded the said William Dickie as aforesaid as also certain other sums of money for the costs and charges of the said Thomas Aris by him about his suit in that behalf expended and that the said John Harriott Hart and Henry White well knowing the premises last aforesaid *but being such persons as aforesaid and further unlawfully and maliciously intending and devising as aforesaid afterwards to wit on the 17th day of January in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said action wherein the said Thomas Aris had so impleaded the said William Dickie as aforesaid and of and concerning the said damages so assessed to the said Thomas Aris as aforesaid and also of and concerning the said Edward lord Ellenborough and the character and conduct of the said Edward lord Ellenborough as such cheif justice as aforesaid and as a peer and lord of the parliament of this kingdom to the tenor and effect following (that is to say)*

"To the Right Hon. Edward Lord Ellenborough" (meaning the said Edward lord Ellenborough) the Lord Chief Justice of his Majesty's Court of King's-Bench &c. &c. &c.

"My Lord (meaning the said Edward lord Ellenborough);

"The letter which I lately addressed to your lordship's consideration was upon a subject deeply interesting to the feelings of every individual, and important to the community at large. I have reason to believe that it was not deemed unworthy of your attention, and that the principles which it endeavoured to inculcate, have not been disregarded or despised; the case upon which I now venture once more to address your lordship, and solicit your favourable interposition, though widely different in its nature, is no less worthy of your immediate notice. My lord, a British subject is at this moment enduring all the aggravated horrors of a perpetual imprisonment merely upon a civil action for debt! I allude to the extraordinary and unprecedented case of William Dickie" (meaning the said William Dickie) "formerly a stationer in the Strand, but now confined in the Fleet prison, in consequence of a verdict of damages, amounting to seven hundred pounds" (meaning the aforesaid damages so assessed as aforesaid) "obtained against him by Mr. Thomas Aris" (meaning the said Thomas Aris) "the governor of Coldbath-fields prison. The trial took place early in the year 1803, when Dickie" (meaning the said William Dickie) "was arrested, and, being unable to discharge the penalty, still continues a close prisoner, without the smallest prospect of a release! Not long since, an application was made in the Court of King's-bench to procure his enlargement as an insolvent debtor, claiming the benefit of an act lately passed; but the Court, after inquiring into the cause of his detention, and finding it to be for pecuniary damages in an action for defamation, refused his petition, and remanded him to gaol. At this time it is worthy of remark, that neither the prosecutors, his solicitor, nor any other person, appeared in court to oppose his liberation; for obvious reasons I omit, for the present, any comments on the nature and extent of the alleged offence, the character of the original prosecutor, and the subsequent verdict of the jury. I will suppose that the expressions uttered by the defendant" (meaning the said William Dickie) "were highly defamatory, that the plaintiff" (meaning the said Thomas Aris) "was a mild and merciful man, and that the jury were impartial and unprejudiced in their verdict. It is possible, though not probable, that seven hundred pounds might be considered by them as no more than a moderate and reasonable equivalent, for the injury offered to the virtuous and unblemished character of Mr. Aris" (meaning the said Thomas Aris) "and a trifling atonement to the wounded sensibility of

a governor of Coldbath-fields; but your lordship will, I trust, excuse me for expatiating a little upon the peculiar novelty and hardship of the defendant's" (meaning the said William Dickie's) "situation, and on the extra-judicial proceedings that have distinguished the present case. But before I advert to the former, permit me to detain your lordship with a few preliminary reflections on what I conceive to be the law of England, as applicable to the doctrine of libels, and what appears to me to be the just rights and constitutional privileges of every British subject. I am not versed in the intricate subtleties of legal reasoning, nor the abstruse and technical terms of the profession; should I therefore, prove incorrect in my statement, or erroneous in my conclusion, your lordship will scarcely impute to me either sinister or illiberal motives, but freely acquit me of any intention to misrepresent or mislead. Offences are of a two-fold nature—public and private, and are therefore under the control of a separate jurisdiction, and liable to a different punishment. They are denominated criminal or civil, and the mode of proceeding is different in either, the prosecution being in the former by indictment, in the latter by *nisi prius*, or an action on the case. In those actions which are sustained by indictment, and where the crown is the prosecutor on behalf of the public, your lordship well knows, that it is sufficient to demonstrate the malicious or criminal intention, and that the punishment is intended as a salutary example and an adequate reparation for a breach of the public peace.

In those, on the contrary, where a civil action is instituted, and pecuniary compensation is sought and obtained as an atonement for the wrongs and injuries of an aggrieved individual, the offence is merely private. The complainant is the sole party in the cause, and looks only to his own personal exertions for justification and redress.—But, my lord, in the latter case, you are undoubtedly well aware, that it is not merely sufficient that an offence has been committed, but that, in order to obtain, or at least to deserve a verdict, it is necessary also to prove that an injury has been sustained. It is not here the intention of the delinquent or the intrinsic nature of the transaction, that apportions the *quantum meruit* of punishment, or aggravates the offence; it is the *malum in re*, not the *malum in se*, that gives support and efficacy to the charge; and it is therefore absolutely necessary that the plaintiff should clearly prove some positive loss or real damage incurred either in his person, his pro-

perty, or his character, before he can be justly entitled to any indemnification or redress. Now, my lord, applying these observations in the present instance, we find that an action was brought, against Mr. Dickie" (meaning the said William Dickie) "for having uttered certain defamatory expressions of and concerning the character of governor Aris" (meaning the said Thomas Aris) "and a verdict of pecuniary damages awarded to the amount of seven hundred pounds. The damages" (meaning the damages so assessed as aforesaid) "are certainly neither light nor trifling; by many they will probably be estimated as excessive; and therefore, according to the provisions of our neglected, and almost forgotten Magna Charta, illegal and unconstitutional; especially when they consider the character and situation of the respective parties, and the peculiar nature and circumstances of the case. I have not a report of the trial within my reach, but we are told, in a printed petition addressed to the members of the House of Commons, that in the year 1803 'the petitioner' (meaning the said William Dickie) 'was arrested by Mr. Aris' (meaning the said Thomas Aris) 'and has ever since remained a close prisoner in the Fleet-prison; that in consequence he has been totally ruined in his business, and deprived of the means of procuring a livelihood for himself or family, and since his confinement has been reduced to the necessity of subsisting on the precarious charity bestowed on the poor prisoners in that prison.' The petitioner further declares, 'that he is utterly incapable of paying the sum of 700*l.* or any part of it; and if the mercy of parliament be not extended to him, he must suffer perpetual imprisonment.' He then expressed his sincere contrition for his conduct, and, as Mr. Aris produced no evidence to show that he had sustained any pecuniary damages, he hopes that the very long confinement which he has already suffered, may be considered as an adequate atonement to the offended laws of his country. This unfortunate petitioner" (meaning the said William Dickie) "then concludes with most humbly praying, 'that the hon. members of the House will grant him such relief as may enable him to obtain his liberty by the Insolvent bill then under their consideration, that he may again follow his business, and earn an honest livelihood for himself and his helpless family'—Before I proceed, my lord, to notice the result of this petition, which was certainly couched in the most respectful and dutiful terms, and therefore fairly entitled to a liberal and unprejudiced attention, permit me to remind your lord-

ship of the remarkable circumstance stated in the petition, that Mr. Aris" (meaning the said Thomas Aris) "produced no evidence to prove that he had received any real injury or pecuniary damage from the defamatory observations of the defendant" (meaning the said William Dickie.) "If this be true, we are naturally led to inquire why and upon what principle, either of law or equity, for a few rash and intemperate expressions hastily uttered, and as quickly forgotten, a verdict of damages to the extraordinary amount of seven hundred pounds, beyond either his means or his ability to pay, could, by an honest and conscientious jury, have been liberally awarded to the plaintiff" (meaning the said Thomas Aris) "Surely, my lord, political prejudices and party feelings could have had no share in the verdict they gave. I hope not. I impute no intentional error to the individuals impanelled on this trial;—but juries are men, and I must, therefore, excuse them for the frailties incident to human nature, since I cannot justify them on the score either of liberality or discernment. For nearly three years had this unfortunate man" (meaning the said William Dickie) "languished and wasted his health and strength in confinement, when a noble and patriotic statesman stepped forward, and a bill was introduced into parliament" (meaning the parliament of this kingdom) "for the relief of insolvent debtors. Its humanity was unquestioned, its policy and expedience were generally admitted, (your lordship" (meaning the said Edward lord Ellenborough) "excepted,) and it had nearly received the final sanction of that branch of the legislature of which you" (meaning the said Edward lord Ellenborough) "are a member, when you" (meaning the said Edward lord Ellenborough) "suddenly and unexpectedly started up in your place, and proposed the insertion of a clause, which was readily, too readily, adopted, refusing the benefits of this act to all those who were confined upon an action for defamation. It is difficult to conceive an adequate motive for this new and unprecedented regulation! I do not say (and Heaven forbid I should believe) that it was with a particular reference to the individual case of Dickie" (meaning the said William Dickie) "that you" (meaning the said Edward lord Ellenborough) "proposed this obnoxious amendment; but I do say that it completely produced the effect of depriving him of all hope of future consolation, and dooming him to end his days in gaol. You" (meaning the said Edward lord Ellenborough) "are therefore if not designedly, at least accidentally, the sole as well as original

cause of his" (meaning the said William Dickie's) "cruel detention. Were it possible to entertain an idea that your lordship" (meaning the said Edward lord Ellenborough) "in proposing this new and extraordinary clause was influenced by personal motives or vindictive resentment, horrible must be the prospects of those hapless victims who at any time may await your" (meaning the said Edward lord Ellenborough's) "judgment, or come within your" (meaning the said Edward lord Ellenborough's) "reach. The infamous Jeffries would sink to nothing in comparison with a character who could wear the ermined robe of justice only to conceal the dark workings of a black and malignant heart, and prostitute the venerable functions of a judge to ministerial tyranny and individual oppression. I sicken at the thought; my only hope would be, if ever such a wretch should stain the mercy seat of England or pollute the sacred fountain of our holy laws, that he should quickly meet the fate of Jeffries, and be torn in pieces on the bench. I have still much to add—but the length of this letter obliges me to conclude and apologize to your lordship" (meaning the said Edward lord Ellenborough) "for requesting your attention to a future letter, when I shall have a suitable opportunity to resume the subject. JUNIUS.

"Jan. 8, 1808—* Lord Holland."

To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England in contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity

6th Count.—And the said attorney-general of our said lord the king for our said lord the king further giveth the court here to understand and be informed that the said John Harriott Hart and Henry White being such persons as aforesaid and further unlawfully and maliciously devising and intending as aforesaid heretofore to wit on the seventeenth day of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning a certain supposed action wherein it was in and by the said last-mentioned libel surmised that one Thomas Aris had been the plaintiff and one William Dickie the defendant and of and concerning certain damages supposed to have been recovered by the said supposed plaintiff in the said supposed action and also of and concerning the said Edward lord Ellenbo-

rough and the character and conduct of the said Edward Lord Ellenborough as such chief justice as aforesaid and as a peer and lord of the parliament of this kingdom to the tenor and effect following (that is to say)

"To the Right Hon. Edward Lord Ellenborough" (meaning the said Edward Lord Ellenborough) "the Lord Chief Justice of his Majesty's Court of King's-bench, &c. &c. &c."

"My Lord" (meaning the said Edward lord Ellenborough);

"The letter which I lately addressed to your lordship's consideration, was upon a subject deeply interesting to the feelings of every individual, and important to the community at large. I have reason to believe that it was not deemed unworthy of your attention; and that the principles which it endeavoured to inculcate, have not been disregarded or despised. The case upon which I now venture once more to address your lordship, and solicit your favourable interposition, though widely different in its nature, is no less worthy of your immediate notice. My lord, a British subject is at this moment enduring all the aggravated horrors of a perpetual imprisonment, merely upon a civil action for debt! I allude to the extraordinary and unprecedented case of William Dickie" (meaning the said last-mentioned William Dickie) formerly a stationer in the Strand, but now confined in the Fleet prison, in consequence of a verdict of damages, amounting to seven hundred pounds" (meaning the said damages to supposed to have been recovered as aforesaid) "obtained against him by Mr. Thomas Aris" (meaning the said last-mentioned Thomas Aris) "the governor of Coldbath Fields prison. The trial took place early in the year 1803, when Dickie" (meaning the said last-mentioned William Dickie) "was arrested, and, being unable to discharge the penalty, still continues a close prisoner, without the smallest prospect of a release! Not long since, an application was made in the Court of King's-bench to procure his enlargement as an insolvent debtor, claiming the benefit of an act lately passed; but the Court, after inquiring into the cause of his detention, and finding it to be for pecuniary damages in an action for defamation, refused his petition, and remanded him to gaol. At this time it is worthy of remark, that neither the prosecutor, his solicitor, nor any other person, appeared in court to oppose his liberation! For obvious reasons, I omit for the present any comments on the nature and extent of the alleged offence, the character of the original prosecutor, and the subsequent

verdict of the jury. I will suppose that the expressions uttered by the defendant" (meaning the said last-mentioned William Dickie) "were highly defamatory, that the plaintiff" (meaning the said last-mentioned Thomas Aris) "was a mild and merciful man, and that the jury were impartial and unprejudiced in their verdict. It is possible, though not probable, that seven hundred pounds might be considered by them, as no more than a moderate and reasonable equivalent for the injury offered to the virtuous and unblemished character of Mr. Aris," (meaning the said last-mentioned Thomas Aris) "and a trifling atonement to the wounded sensibility of a governor of Coldbath Fields."

"But your lordship will, I trust, excuse me for expatiating a little upon the peculiar novelty and hardship of the defendant's" (meaning the said last-mentioned William Dickie's) "situation, and on the extra-judicial proceedings that have distinguished the present case. But before I advert to the former, permit me to detain your lordship with a few preliminary reflections on what I conceive to be the law of England, as applicable to the doctrine of libels, and what appears to me to be the just rights and constitutional privileges of every British subject. I am not versed in the intricate subtleties of legal reasoning, nor the abstruse and technical terms of the profession; should I therefore prove incorrect in my statement, or erroneous in my conclusions, your lordship will scarcely impute to me either sinister or illiberal motives, but freely acquit me of any intention to misrepresent or mislead."

"Offences are of a twofold nature—public and private—and are therefore under the control of a separate jurisdiction, and liable to a different punishment. They are denominated criminal or civil, and the mode of proceeding is different in either, the prosecution being in the former by indictment, in the latter by nisi prius, or an action on the case. In those actions which are sustained by indictment, and where the crown is the prosecutor on behalf of the public, your lordship well knows, that it is sufficient to demonstrate the malicious or criminal intention, and that the punishment is intended as a salutary example and an adequate reparation for a breach of the public peace."

"In those, on the contrary, where a civil action is instituted, and pecuniary compensation is sought and obtained as an atonement for the wrongs and injuries of an aggrieved individual, the offence is merely private; the complainant is the sole party in the cause, and looks only to his own personal exertions for justification and redress. But, my lord,

in the latter case, you are undoubtedly well aware that it is not merely sufficient that an offence has been committed, but that, in order to obtain, or at least to deserve a verdict, it is necessary also to prove that an injury has been sustained. It is not here the intention of the delinquent, or the intrinsic nature of the transaction that apportion the *quantum meruit* of punishment, or aggravates the offence; it is the *malum in re*, not the *malum in se*, that gives support and efficacy to the charge, and it is therefore absolutely necessary that the plaintiff should clearly prove some positive loss or real damage incurred either in his person, his property, or his character, before he can be justly entitled to any indemnification or redress. Now, my lord, applying these observations in the present instance, we find that an action was brought against Mr. Dickie" (meaning the said last-mentioned William Dickie), "for having uttered certain defamatory expressions of and concerning the character of governor Aris" (meaning the said last-mentioned Thomas Aris), "and a verdict of pecuniary damages awarded to the amount of seven hundred pounds. The damages" (meaning the damages so supposed to have been recovered as aforesaid) "are certainly neither light or trifling; by many they will probably be estimated as excessive, and therefore, according to the provisions of our neglected and almost forgotten Magna Charta, illegal and unconstitutional, especially when they consider the character and situation of the respective parties, and the peculiar nature and circumstances of the case. I have not a report of the trial within my reach, but we are told in a printed petition addressed to the members of the House of Commons, that in the year 1803 'the petitioner'" (meaning the said last-mentioned William Dickie) "'was arrested by Mr. Aris'" (meaning the said last-mentioned Thomas Aris) "'and has ever since remained a close prisoner in the Fleet prison; in consequence, he has been totally ruined in his business, and deprived of the means of procuring a livelihood for himself or family, and since his confinement has been reduced to the necessity of subsisting on the precarious charity bestowed on the poor prisoners in that prison.' The petitioner farther declares, that 'he is utterly incapable of paying the sum of 700*l.* or any part of it; and if the mercy of parliament be not extended to him, he must suffer perpetual imprisonment.' He then expresses his sincere contrition for his conduct, and, as Mr. Aris produced no evidence to show that he had sustained any pecuniary damages, he hopes that the very long confinement

which he has already suffered, may be considered as an adequate atonement to the offended laws of his country. This unfortunate petitioner then concludes with most humbly praying, 'that the honourable members of the House will grant him such relief, as may enable him to obtain his liberty by the Insolvent bill then under their consideration, that he may again follow his business, and earn an honest livelihood for himself and his helpless family.' Before I proceed, my lord, to notice the result of this petition, which was certainly couched in the most respectful and dutiful terms, and therefore fairly entitled to a liberal and unprejudiced attention, permit me to remind your lordship of the remarkable circumstances stated in the petition, 'that Mr. Aris'" (meaning the said last-mentioned Thomas Aris) "'produced no evidence to prove that he had received any real injury, or pecuniary damage from the defamatory observations of the defendant'" (meaning the said last-mentioned William Dickie) "If this be true, we are naturally led to inquire why, and upon what principles either of law or equity, for a few rash and intemperate expressions hastily uttered and as quickly forgotten, a verdict of damages, to the extraordinary amount of seven hundred pounds (beyond either his means or his ability to pay), could by an honest and conscientious jury, have been deliberately awarded to the plaintiff" (meaning the said last mentioned Thomas Aris). "Surely, my lord, political prejudices and party feelings could have had no share in the verdict they gave! I hope not: I impute no intentional error to the individuals impanelled on this trial; but juries are men, and I must, therefore, excuse them for the frailties incident to human nature, since I cannot justify them on the score either of liberality or discernment.

"For nearly three years had this unfortunate man" (meaning the said last-mentioned William Dickie) "languished and wasted his health and strength in confinement, when a noble and patriotic statesman stepped forward, and a bill was introduced into parliament" (meaning the parliament of this kingdom) "for the relief of insolvent debtors. Its humanity was unquestioned, its policy and expedience were generally admitted (your lordship" (meaning the said Edward lord Ellenborough) "excepted), and it had nearly received the final sanction of that branch of legislature of which you" (meaning the said Edward lord Ellenborough) "are a member, when you" (meaning the said Edward lord Ellenborough) "suddenly and unexpectedly started up in your place, and proposed the insertion of a

clause which was readily, too readily, adopted, refusing the benefits of this act to all those who were confined upon an action for defamation! It is difficult to conceive an adequate motive for this new and unprecedented regulation. I do not say (and Heaven forbid I should believe) that it was with a particular reference to the individual case of Dickie" (meaning the said last-mentioned William Dickie) "that you" (meaning the said Edward lord Ellenborough), "proposed this obnoxious amendment; but I do say, that it completely produced the effect of depriving him of all hope of future consolation, and dooming him to end his days in gaol! You" (meaning the said Edward lord Ellenborough) "are therefore, if not designedly, at least accidentally the sole as well as original cause of his" (meaning the said last-mentioned William Dickie's) "cruel detention! Were it possible to entertain an idea, that your lordship" (meaning the said Edward lord Ellenborough), "in proposing this new and extraordinary clause, was influenced by personal motives, or vindictive resentment, horrible must be the prospects of those hapless victims who at any time may await your" (meaning the said Edward lord Ellenborough's) "judgment, or come within your" (meaning the said Edward lord Ellenborough's) "reach! The infamous Jefferies would sink to nothing, in comparison with a character who could wear the ermined robe of justice, only to conceal the dark workings of a black and malignant heart, and prostitute the venerable functions of a judge to ministerial tyranny, and individual oppression. I sicken at the thought! My only hope would be, if ever such a wretch should stain the mercy seat of England, or pollute the sacred fountain of our holy laws, that he should quickly meet the fate of Jefferies, and be torn in pieces on the bench. I have still much to add, but the length of this letter obliges me to conclude, and apologize to your lordship" (meaning the said Edward lord Ellenborough), "for requesting your attention to a future letter, when I shall have a suitable opportunity to resume the subject. JUNIUS."

"January 8th. 1808."

—*To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

7th Count—And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed

that the said John Harriott Hart and Henry White so being such persons as *aforesaid and unlawfully and maliciously devising and intending as aforesaid heretofore to wit on the 20th day of December* in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain scandalous malicious and defamatory libel of and concerning the said Edward lord Ellenborough and his character and conduct as such chief justice as aforesaid and containing therein amongst other things certain other scandalous malicious and defamatory matters and things of and concerning the said Edward lord Ellenborough and his character and conduct as such chief justice as aforesaid to the tenor and effect following (that is to say) "Be assured that the public mind is steadily fixed on the character and conduct of the present lord chief justice of England" (meaning the said Edward lord Ellenborough), "and regards them with an eye of suspicion and alarm! The increasing frequency of duels in this country can excite no surprise, when we reflect that an opinion appears to be rapidly gaining ground (an opinion which I trust is ill-founded), that private injuries have of late been seldom compensated by public reparation, that the sufferings and grievances of individuals have become the subjects of banter and ridicule, that the characters of witnesses have been assailed, and their testimony confused and perverted by the gross calumnies and vulgar witticisms of babbling pleaders and pettifogging attornies, and that men therefore rather choose to become the arbiters and judges of their own causes and quarrels, than seek in vain for a tardy or ineffectual redress from a public court of justice! The consequences to a man of your lordship's" (meaning the said Edward lord Ellenborough's) "penetration and discernment need not be pointed out; think of them seriously at your leisure, and for the present, my lord, farewell."—*To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

8th Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White so being such persons as aforesaid and again unlawfully and maliciously devising and intending as afore-

said heretofore to wit on the 20th day of December in the 48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said Edward lord Ellenborough and the character and conduct of the said Edward lord Ellenborough as such chief-justice as aforesaid containing therein amongst other things certain other scandalous and malicious matters of and concerning the said Edward lord Ellenborough and the character and conduct of the said Edward Lord Ellenborough as such chief-justice as aforesaid according to the tenor and effect following (that is to say) "I have read a report of a trial in the Morning Post and Morning Chronicle of this date, before lord chief-justice Ellenborough" (meaning the said Edward lord Ellenborough); "if that report be correct, it is full time that the doctrines and decisions of that personage" (meaning the said Edward lord Ellenborough) "should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship. He" (meaning the said Edward lord Ellenborough) "has upon several occasions announced a bias so very strong towards arbitrary power, that I have been led to suppose it was in the latter end of the reign of James the second, and not of George the third (the father of his people), that I was living. Impunity gives boldness; and it is, perhaps, owing to the silence of the public on the animadversions and addresses of our judges to the jury of late years, that the promulgation of principles subversive to our rights has been carried to a very censurable extent.—" *To the great scandal and disgrace of the said Edward lord Ellenborough and the administration of public justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

Ninth Count—And the said attorney-general of our said lord the king for our said lord the king further giveth the Court here to understand and be informed that the said John Harriott Hart and Henry White so being such persons as aforesaid and again unlawfully and maliciously devising and intending to traduce defame and vilify the said Edward lord Ellenborough and to bring him into great and public hatred among all the liege subjects of our said lord the king heretofore to wit on the 20th day of December in the

48th year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said Edward lord Ellenborough and the character and conduct of the said Edward lord Ellenborough as such chief-justice as aforesaid containing therein among other things certain other scandalous and malicious matters of and concerning the said Edward lord Ellenborough and the character and conduct of the said Edward lord Ellenborough as such chief-justice as aforesaid to the tenor and effect following (that is to say) "Lord Ellenborough" (meaning the said Edward lord Ellenborough) "seems to think very lightly of an Englishman being confined several hours in irons by the impudent mandate of a man, hired to behave civil to the person whom he insults and degrades. Lord Ellenborough" (meaning the said Edward lord Ellenborough) "feels nothing for the wounded sensibilities of a female, the daughter of the injured party. I suppose his lordship" (meaning the said Edward lord Ellenborough,) "is not a father, I should almost question his" (meaning the said Edward lord Ellenborough's) "ever having been a son, if there had been any other mode of coming into existence."—*To the great scandal and disgrace of the said Edward lord Ellenborough and of the administration of justice in England* In contempt of our said lord the king and his laws to the evil example of all others and against the peace of our said lord the king his crown and dignity.

10th Count—And the said attorney-general of our said lord the king for our said lord the king giveth the Court here further to understand and be informed that the said John Harriott Hart and Henry White so being such persons as aforesaid and again unlawfully and maliciously devising and intending as last aforesaid heretofore to wit on the seventeenth day of January in the forty-eighth year of the reign aforesaid at London aforesaid in the parish and ward aforesaid unlawfully and maliciously did print and publish and cause and procure to be printed and published a certain other scandalous malicious and defamatory libel of and concerning the said Edward lord Ellenborough and the character and conduct of the said Edward lord Ellenborough as such chief justice and lord and peer of parliament as aforesaid containing therein among other things certain other scandalous and malicious matters and things of and concerning the said Edward lord Ellen-

borough as such chief justice and lord and peer of parliament as aforesaid to the tenor and effect following (that is to say)

"For nearly three years had this unfortunate man languished and wasted his health and strength in confinement, when a noble and patriotic statesman stepped forward and a bill was introduced into parliament" (meaning the parliament of this kingdom) "for the relief of insolvent debtors. Its humanity was unquestioned, its policy and expedience were generally admitted, your lordship" (meaning the said Edward lord Ellenborough) "excepted, and it had nearly received the final sanction of that branch of the legislature of which you" (meaning the said Edward lord Ellenborough) "are a member, when you" (meaning the said Edward lord Ellenborough) "suddenly and unexpectedly started up in your place, and proposed the insertion of a clause which was readily, too readily, adopted, refusing the benefits of this act to all those who were confined upon an action for defamation! It is difficult to conceive an adequate motive for this new and unprecedented regulation, I do not say (and heaven forbid I should believe) that it was with a particular reference to the individual case of Dickie, that you" (meaning the said Edward lord Ellenborough) "proposed this obnoxious amendment, but I do say that it completely produced the effect of depriving him of all hope of future consolation, and dooming him to end his days in gaol! You" (meaning the said Edward lord Ellenborough) "are, therefore, if not designedly at least accidentally the sole as well as original cause of his cruel detention! Were it possible to entertain an idea that your lordship" (meaning the said Edward lord Ellenborough), "in proposing this new and extraordinary clause, was influenced by personal motives or vindictive resentment;—horrible must be the prospects of those hapless victims who at any time may await your" (meaning the said Edward lord Ellenborough's) "judgment, or come within your" (meaning the said Edward lord Ellenborough's) "reach.—The infamous Jefferies would sink to nothing, in comparison with a character who could wear the ermin'd robe of justice only to conceal the dark workings of a black and malignant heart, and prostitute the venerable functions of a judge to ministerial tyranny and individual oppression. I sicken at the thought; my only hope would be, if ever such a wretch should stain the mercy-seat of England, or pollute the sacred fountain of our holy laws, that he should quickly meet the fate of Jefferies, and be torn in pieces on the bench.

"I have still much to add, but the length of this letter obliges me to conclude and apologize to your lordship" (meaning the said Edward lord Ellenborough) "for requesting your attention to a future letter, when I shall have a suitable opportunity to resume the subject."—*To the great scandal and disgrace of the said Edward lord Ellenborough* In contempt of our said lord the king and his laws To the evil example of all others and against the peace of our said lord the king his crown and dignity Whereupon the said attorney-general of our said lord the king who for our said lord the king in this behalf prosecuteth for our said lord the king prayeth the consideration of the Court here in the premises and that due process of law may be awarded against them the said John Harriott Hart and Henry White in this behalf to make them answer to our said lord the king touching and concerning the premises aforesaid.

Mr. Attorney-General [Sir V. Gibbs, afterwards Lord Chief Justice of the Common Pleas].

Gentlemen of the Jury ;

In the exercise of that discretion which is reposed in me, I have thought it right to file this information, as I also filed another, against the present defendants, for printing and publishing a most dangerous and wicked libel in a newspaper called *The Independent Whig*. I have not performed this duty without reflection. The author of *The Independent Whig* has weekly had cause to know (for it is a weekly publication) that I have been towards him very abstinent; but, when I had reason to judge, from perusing the publications which are now the subject of consideration, that there was a determined and desperate purpose to destroy the respect which has hitherto been entertained in this country for the administration of justice, and to render the laws contemptible by holding up to contempt, horror, and detestation, those who are appointed to execute them, I thought it was full time for me to interpose, and call upon a jury to state their opinion of the conduct of men who disseminated such publications.

The immediate object of this slander is the lord-chief-justice of the Court of King's-Bench—the noble lord who usually presides here. I have been so long acquainted with that noble lord, I have been so nearly and was so early connected with him in habits of intimacy,—we having received our education at the same university, having pursued the same studies, and having afterwards been brought together in the practice of the same profession,—that I fear any thing I may say of him may be attributed to an improper partiality. For a judgment of what his conduct on the seat of justice has uniformly been, I

rather—and I am glad I can do it—appeal to you who are present on this occasion, and who have been present on many others, when that noble lord has presided where his lordship [Mr. Justice Grose] is now seated. You will doubtless recollect whether he has or has not held the scales of justice with an even hand,—you will recollect whether he has not always expressed an anxiety that every circumstance respecting every case, which it has fallen to his lot to try, should be fully understood by the jury,—you will recollect whether he has not, with as much perspicuity as he was capable of (and no one is more capable), and with as much diligence as belongs to man, stated every fact and circumstance; and with the nicest discrimination pointed out to the jury the relation and bearing of every fact to the particular case. You know that, sometimes, when you have been satisfied upon a case brought before you, you have been surprised by the great anxiety of the noble lord, lest any thing should have escaped your observation. In short, I need only ask you, whether he has not, upon all occasions, shown the utmost anxiety that justice should prevail, and that the litigating parties should have the full benefit of the upright administration of the laws.

The object of these publications is to hold up to horror and detestation this noble lord, as a man who has disgraced the high situation he holds, as a man who, from some dark sinister motive, pointed at, but not stated, has prevented a suitor from obtaining justice, that he has stood between him and that which was his right, that he has, for some bad purpose or other, interposed to prevent the jury doing justice to the person who sought it at their hands.

A cause, wherein one Thomas Boyce was plaintiff, and one Thomas Gabriel Bayliffe * was defendant, was, in the month of December last, tried in this court before the noble lord. The defendant was captain of an Indiaman. Boyce, who had kept a tavern in the East Indies, was returning with his daughter, a girl of eight or nine years of age, in the ship of which Bayliffe was the captain. He was not one of the cabin-passengers, who, you know, pay a larger sum of money for their accommodation than the other passengers; and of course these latter are not entitled to the same privileges. I should state to you that the poop is that part of the ship which is particularly appropriated to the cabin-passengers. In the early part of the voyage, Mr. Boyce had placed himself on the poop, and there he had continued. Afterwards, for some reason or other which it is not material to state, he was desired to remove from the poop, in language which I am ready to admit was not very proper to be used. It was such language as is frequently used on-board ship, and which we know very well has not the same

meaning as if used in a drawing-room. At the time he was desired to withdraw from the poop, his daughter was with him, and it was stated, that *she* might have any accommodation that the ship afforded. Shortly after this circumstance, it was supposed that two ships, seen in the offing, were enemies, and it was necessary that the ship in which these parties were should be prepared for action; it was necessary that the captain should take steps for active defence. He assigned a proper situation to every person on-board; he assigned to the passengers a place on the poop; for it is the only place in the ship where passengers who have the use of fire-arms, can possibly be of any use. Mr. Boyce absolutely refused to go there; he would not assist in defending the ship in that place, but in any other he said he would. The captain felt himself in a very disagreeable situation; he knew that if his orders were disobeyed by one, they were very likely to be disobeyed by all. It was necessary that he should enforce obedience. He asked him if he would obey, and, upon his refusal, put him in irons. He was subjected to no inconvenience,—I mean he was subjected to no incidental inconvenience beyond the act itself.—After that, nothing passed of which he could complain till the ship arrived at St. Helena; he there quitted her, and came to England in another. He afterwards brought an action against the captain for putting him in irons. That the captain exceeded his authority, there can be no doubt; at the same time, although we have not a sense and feeling of all the danger that then surrounded and presented itself to captain Bayliffe, yet, even sitting here, we may see that there was some excuse for a man's having exceeded the line of his duty, at a time when it was so material that his orders should be enforced: for, in the middle of an action, or in preparing for it, to be weighing every thing by the strict rule of municipal law would be impossible.

Gentlemen, the cause was tried; the circumstances were investigated by a special jury; the facts, with all their bearings, were summed up by the lord-chief-justice, and the jury found a verdict for the plaintiff with eighty pounds damages.

It was part of the complaint of the plaintiff that he had been obliged to leave the ship, and that he had paid one hundred pounds for his passage home. Now, with respect to that, his lordship told the jury that there was no evidence from which they could ascribe his leaving the ship to the treatment he had received. It was true he was put in irons, but there was no subsequent complaint; he might have completed his voyage to England if he had chosen, and might have been as well pleased as any other passenger. His lordship told the jury that they could not take that into consideration, for it was a damage which could not be ascribed to any treatment of the plaintiff by the defendant. If he had told

* This case is reported in 1 Campb. 58.

the jury that they might have taken into consideration the expense of his passage home, and the jury had given damages to Mr. Boyce for the expenses he had been put to, I appeal to his lordship on the bench whether I should not, as a matter of law and right, have been entitled to a new trial. One of these publications is a libellous attack on the noble lord for not doing that, which, if he had done, the consequence would have been, that I should have been entitled to overturn the verdict by the doctrine which it is contended he ought not to have adopted. These are the facts of the case, as they appear with respect to the first libel.

Now permit me to state to you the language in which lord Ellenborough is spoken of, for having so conducted himself. It begins thus:—"The magnitude and importance of the subject to which I request your earnest and immediate attention, must furnish a sufficient apology for thus personally addressing your lordship. The two most valuable and perhaps only remaining securities for the rights and liberties of Englishmen are unquestionably the Trial by Jury and the Liberty of the Press." I do not disagree with this writer in the value he puts upon the Trial by Jury and the Freedom of the Press; but I wish that the Trial by Jury should be free; I wish that it should be a trial *by the jury*; I wish the jury should not be placed in this most improper situation, that, pursuing the dictates of their own consciences, and finding their verdicts according to the facts as they appear upon the evidence, they should be held up to public detestation by the author of any newspaper, who may happen to be dissatisfied with their verdicts. I respect the Trial by Jury, I wish it to be a free mode of trial, and I would discountenance such attacks upon it.

The author of this publication states, that the Freedom of the Press is one of the greatest means of the preservation of our liberty and happiness: I agree with him: there is no man who wishes to support the Liberty of the Press more than I do. If any of you have read *The Independent Whig*, when you are told that no information has been filed against the author of it, you will be more ready to blame me for having allowed a twelvemonth to pass without having done any thing to curb its licentiousness, than to accuse me of having attempted to restrain the liberty of the press. It is only the licentiousness of the press I wish to restrain, and if I should find these persons returning within the pale of their duty, and uttering only such doctrines as a man in my situation can suffer unrestrained, I can assure them they will never find me their enemy; but I can also assure them that my abstinence has not proceeded from any consideration which will prevent me, if they persevere in the conduct they have pursued, from applying the utmost strength of the law to stop their

career. I hope it will not be necessary—I wish it may not—I have great expectations that it will not, knowing, as I do, the learning and good sense of the gentleman to whom they have entrusted their defence.

In that hope I shall confine myself to the case now before you. I thought it necessary to state my opinion of the doctrine with which the writer sets out, that the trial by jury, and the freedom of the press, ought to be considered as invaluable blessings, and that, if they were destroyed, we should be left without our best securities. I agree with him in his doctrine, though not in his application of it. He goes on—"So long as the administration of justice continues pure and undefiled, and the wrongs and injuries of a suffering people experience full and adequate redress—so long as the public functionaries of our assemblies of legislature and courts of justice be open to free examination and inquiry—so long, my lord, and no longer, may the people of this country be justly considered as safe from the gigantic strides of despotism, and encroachments of arbitrary oppression. Impressed with this salutary conviction, I feel it a positive right, as well as an imperious duty, to rouse the vigilant attention of my fellow-countrymen to the late proceedings in their courts of justice; to call publicly upon your lordship"—this you see is a letter to lord Ellenborough—"for satisfactory explanation respecting a case that recently came under your cognizance, and was submitted to your jurisdiction; to examine freely, but respectfully, the force and validity of the observations that have been attributed, falsely I hope, to your lordship, and clearly demonstrate their evil tendency and pernicious consequence to the public at large." So that you see, without taking the trouble to inquire whether the doctrines and observations he attributes to his lordship were such as had been used by his lordship, but merely stating that he finds them in a public print, he takes it for granted that they had been uttered by him, at the same time expressing a hope that they may not have been truly attributed to his lordship—and he then says he shall not only examine them, but that he shall demonstrate their evil tendency and pernicious consequence to the public at large.

This is assuming a pretty large extent of authority—he is not only to inquire, but is to demonstrate the pernicious tendency of the doctrines which the lord-chief-justice has laid down in a trial had before him; but it is trifling to what follows:—He says, "My lord, it is essential, not only to the national safety, but to the security of every individual subject, that the man who is intrusted to preside over the tribunals of England, should be eminently distinguished for inflexible integrity, and uncorrupted virtue—that he should rise superior to all selfish considerations, or party views, and that the

gation of his opinions from the judgment seat should place his character in the most exalted point of view, as the avowed enemy of corruption and the friend of public justice." Now, surely, no man can read this without seeing that the object of the writer is to insinuate to the public, that lord Ellenborough is a man directly contrary to what is here described—to insinuate that he is a man *not* eminently distinguished for inflexible integrity and uncorrupted virtue—that he is a man who does *not* rise superior to all selfish considerations or party views—that the promulgation of his opinions from the judgment seat does *not* place his character in the most exalted point of view as the avowed enemy of corruption, and the friend of public justice. No man can read this sentence without seeing that the object is so to represent the character of the noble lord.

He then proceeds to allude to a transaction of some standing, which had taken place with respect to a Mr. Dickie. He says, that he mentions it only in passing,—that he intended to discuss it,—but he was now called to the consideration of the case then before him, namely, that of Boyce.—He then gives a short account of the case:—he says, "A most shameful and wanton outrage on the personal freedom of an English subject has been committed by a brutal ruffian, and the complainant appeals to a British tribunal for indemnification and redress.—The case is completely proved, as well by the concurrent testimony of the different witnesses in behalf of the plaintiff, as by the cross-examination of those on the part of the defendant.—The circumstances are shortly these,"—then he takes upon him to describe the circumstances;—states that the plaintiff was ordered to quit the poop, and then he says, that soon after, there was an alarm of some strange vessels in sight, which were mistaken for enemies.—He then says, "the defendant calls over the names of all the passengers, orders them to their respective quarters, and commands the plaintiff to take his station at the poop—the latter refuses to obey this order, not choosing to return to the situation from which he had been so ignominiously driven,—he at the same time professes his readiness to fulfil the duty in any other situation. The defendant immediately calls out,—'Here take this d—d rascal, and put him in irons.'" Now this, gentlemen, was the expression I alluded to before.—It certainly was improper.—"This brutal and ferocious order is instantaneously obeyed, and a British subject and a freeman is loaded with fetters, and exposed on the poop to the insulting derision of the crew and inclemency of a cold night.—For this outrage, and for indemnification for the expense of removal from a vessel where he could no longer with safety or prudence continue, he returns to England in another, and seeks for reparation in a British court of justice." Now that is the invention of the

author:—it is not true that he could no longer with safety or prudence continue in the vessel; for, after the circumstance of having been put in irons, he had not the slightest cause of complaint.

He says, "the British public, my lord, will be amazed to learn, after a recital of this atrocious offence, and a full and complete proof of the truth of the accusation, that, under the direction, and upon hearing the concluding remarks, of the lord-chief-justice of England, the jury feeling, no doubt, for the wounded honor and insulted rights of an injured fellow-countryman, award damages to the extraordinary amount of—I blush to name them—eighty pounds!"—I will not inquire to-day what all the particular circumstances of the case were, or whether the damages given by the verdict were too small or too large,—it is a subject with which we have nothing to do; but, if the trial by jury is to be held up as an object of veneration and respect, can it be permitted to be said that the jury are not to determine what is a sufficient compensation to a person complaining of an injury? Is there any subject more peculiarly and immediately within their jurisdiction, than what ought to be a recompence to the party who seeks compensation at their hands?—And can you, looking through the whole kingdom, hope to find men with minds sufficiently firm to resist attacks of this kind, if they are countenanced and suffered to go unpunished?—Can you hope that the duty of juries will be performed with courage and firmness, if they are exposed to attacks of this sort, for conduct such as I have described to you? Can it be said that this is not a gross and scandalous libel on those who returned the verdict?—Can it be said that this is not a gross and scandalous libel, not only on them, but on the lord-chief-justice—for, as much, nay more, is attributed to his observations than to their verdict?

Having first cast this odium on the jury, he then endeavours to exculpate them, by attributing their verdict to the concluding observations of the lord-chief-justice.—Here, gentlemen, let me say, that it is the duty of every judge to state to the jury such observations as occur to him, and which he thinks are material to the cause in question.—I think you will take it for granted that the observations of the noble and learned judge were well-founded and correct; but no man shall be permitted to arraign in this way the conduct of a chief-justice, even if he acts erroneously, which, in this case, the lord-chief-justice did not do. No man shall be suffered to attribute to him corrupt motives. So far from the noble and learned judge having proceeded erroneously in the observations he had addressed to the jury, his observations were correct in the extreme.—The writer then proceeds to state, "The public must certainly be at a loss, my lord, to account for the excessive lenity of this singular verdict, espe-

cially when they contrast it with the case of Dickie, where, merely for words spoken in a common ale-house, over his cups, and possibly not quite in his sober senses, a verdict was given for 700*l.*; and the unhappy culprit, in consequence of his inability to pay the penalty of his offence, and even in spite of the forbearance of the aggrieved party, is doomed to end his days in a gaol." This is only preparatory to another libel.—This business, with respect to Dickie, is only introduced incidentally. The author had said that he would inquire into the case of Dickie, but he would, in the mean time, favour the public with his observations on the case of Boyce. You will find, in a subsequent libel, that he is not less outrageous, offensive, and unjust, in his observations on the trial of Dickie than he has been on the case of Boyce and Bayliffe.—I beg you will bear in your minds that he states that a verdict for 700*l.* was given against Dickie, for words spoken in a common ale-house over his cups, and possibly not quite in his sober senses: these things are not of slight consequence—they pass from hand to hand, and do infinite mischief in their passage; for, I myself heard this sentence repeated by one of the most eloquent men in the kingdom—repeated, I must suppose, from this publication, because it was not to be found in any other.

I proceed now with what farther is stated on the case of Boyce and Bayliffe;—I told you that he had cast the fault upon, and that he had left the crime of the verdict with, the jury—you will see how he transfers it to the noble lord, referring the whole blame of it to his lordship.—He says, "but our surprise will be materially diminished, and our apprehensions increased, when we peruse your concluding observations.—We are told, in the printed statement of this remarkable trial, that your lordship was pleased to observe, that, in this case, neither party had been entirely free from blame!!!" After this there are three marks of admiration.—I shall explain to you that probably his lordship spoke in a language not quite intelligible to this author.—He goes on, "And we are naturally led to inquire of your lordship, what part of the plaintiff's conduct was deserving of reprehension.—You acknowledge that he had been rudely driven from the poop; and, without any assignable cause or alleged misconduct, deprived of his usual comforts of exercise and recreation!—You assert that the defendant had the strict right of withdrawing his indulgence if he thought proper, while you at the same time deny the exercise of a similar right to the plaintiff to withhold his assistance from a wretch who had publicly treated him with gross indignity and contempt, in a case, too, of extreme personal danger, where he was bound by no moral sympathy or legal obligation.—You said that the plaintiff falsely consulted the suggestions of his wounded pride!

Good God! my lord! is that delicacy of sentiment, that acuteness of feeling, that nice sense of honor, that decent pride, which preserves men honest amidst the raging temptations of surrounding vice and folly, and nourishes in their bosoms the noble principles of freedom and independence—is this, the safeguard, and often the substitute, of all our other virtues, which resents an open insult as a serious injury, and learns to practise the useful lessons of forbearance out of respect for the rights of others, to be thus misrepresented, undervalued, and despised?—Upon what principle, my lord, either of law or justice, was this injured gentleman bound to expose his life and hazard the ruin of his helpless daughter who could look to her parent alone for protection and support?—Was he enrolled or registered as one of the crew?—Did he receive the wages of a soldier or a seaman, or had he any share or concern in the property or merchandise of this vessel?—None.—He was a private passenger, coming peaceably over to England for the laudable purpose of educating his only daughter, and claimed the common rights of hospitality and decorum.—My lord, the details of this trial have filled me with horror and indignation. Be assured that the public mind is steadily fixed on the character and conduct of the present lord-chief justice of England, and regards them with an eye of suspicion and alarm."—I am to-day speaking in the presence of honorable and loyal subjects—I am speaking in the presence of men, who would strain every nerve in support of their sovereign, and the constitution of the country to which they have the happiness to belong—I am speaking in the presence of men, who know and are capable of feeling all the horror and detestation which deservedly attaches on such doctrines as are in this paper alleged to be the doctrines of the noble lord.—What indignation would they not feel from a perusal of a paper of this kind, if this Court was filled by judges less high in the public estimation than the present?—What would they feel, on perusing a publication calculated to hold up the first magistrate as an object of public detestation and horror, by stating that his conduct had been such as to create suspicion and alarm? Certainly nothing could be more likely on bad minds to have the effect of driving them to acts of violence against his person, than teaching them that their rights were not protected, and that the only place where there could be any chance of obtaining redress would be where they could maintain their rights by their own personal strength; but, such is the evident object of this publication: and it pleases me to think, that, with all the external dangers that surround this country, we have nothing internally to dread. There are no spirits in this country such as the author supposes to exist, or such as he wishes to inflame, but, whether hereafter there may or may not exist such

spirits, and whether a more favorable time may hereafter occur for producing the effect which it is the tendency of this paper to produce, I know not,—but I know that it is my duty to prevent such publications from issuing from the press with impunity, and, in performance of that duty, I have called upon the defendants to answer for this publication.

Gentlemen, this is the substance of the first libel which these defendants have published in the *Independent Whig* of the 20th of December, 1807—and there is a contrivance in the manner in which they have uttered this calumny, well calculated to produce the effect which I fear was the object of these publishers.—It is evident that they had the farther design of making it appear, that, in different parts of the country, the circumstances of this trial had made a deep impression. Having given this letter, which is signed “JUNIUS,” they proceed to give another, to which there is affixed no particular signature, but that of, “A SEAMAN.” It is, however, quite plain that they are both written by the same person; and, as if the first letter was not strong enough, though I should apprehend that holding out the chief-justice as an object for suspicion and alarm was quite sufficient, the subsequent libel goes much farther. I think you will say, that, by the contents of this latter paper, the first libel is far exceeded.—It purports to be the letter of “A SEAMAN,” and is addressed to the editor of the *Independent Whig*.—It begins, “I have read a report of a trial,” by which is meant the trial of Boyce and Bayliffe “in the *Morning-Post* and *Morning Chronicle* of this date, before lord-chief-justice Ellenborough, and, if that report be correct, it is full time that the doctrines and decisions of that person should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship.”—The direct object of this paper is, to persuade a mob, if any such existed in this country, to tear lord Ellenborough by force from the seat of justice, and destroy him.—Before I proceed to read the paper, I state most confidently that such is its object.—The writer says, “he has, upon several occasions, announced a bias so very strong towards arbitrary power, that I have been led to suppose it was in the latter end of the reign of James the second, and not of George the third (the father of his people), that I was living.”—There is a great deal of art, contrivance, and knowledge, displayed in this publication: the writer supposes that he was living, not in the reign of George the third, the father of his people, but in that of James the second.—Now, gentlemen, mark!—judge Jeffries lived in the reign of James the second: judge Jeffries was not absolutely killed by a mob, but he was seized and almost torn to pieces by a mob, and died at last in the Tower, in consequence of

the injuries he received from a mob. I believe no man knows the history of the country better than my learned friend who is to defend these publishers, and he knows that it was in consequence of his misdeeds in his judicial character that Jeffries was placed in the Tower;—that, by the indignation of the populace he was almost torn to pieces on his being committed to the Tower, as the intended victim of justice, and that he died by the personal mischief and hurt he received from an outrageous mob. It was not, therefore, very innocent to remind the public of the reign of James the second, and to compare this transaction with some transaction in that reign.

But it is not only in his judicial character that the noble lord is attacked,—the attack is levelled at his moral character with the same severity.—The writer says, “impunity gives boldness, and it is, perhaps, owing to the silence of the public on the animadversions and addresses of our judges to the jury of late years, that the promulgation of principles subversive of our rights has been carried to a very censurable extent.”—Now, I ask you, as men of sense, whether the object of this publication be not to keep the judges and jury in check,—to make them amenable to such future observations and animadversions as may be made in newspapers, in case the verdicts they give should happen to render them obnoxious to those authors who may wish to correct their conduct or sway it to their own views.—Then he says, “I know nothing of the parties in question:—I know, indeed, that captains of Indiamen are apt to fancy themselves great men, and to exercise an authority indecent and illegal.”—Then he institutes a comparison between the captain of a ship and a stage-coachman, upon which it is not necessary for me to dwell.—I stated to you that this was not only an attack on the judicial but also on the moral character of lord Ellenborough. He thus proceeds: “Lord Ellenborough seems to think very lightly of an Englishman being confined several hours in irons by the impudent mandate of a man hired to behave civil to the person whom he insults and degrades:—lord Ellenborough feels nothing for the wounded sensibility of a female, the daughter of the injured party.”—I should state to you that there was not the slightest imputation of any misconduct on the part of the defendant towards the daughter.—The writer of this libel having stated that lord Ellenborough felt nothing for the wounded sensibility of the daughter, adds, “I suppose his lordship is not a father, —I should almost question his ever having been a son, if there had been any other mode of coming into existence.”—[At this part of the libel there was an indication of mirth among some of the auditors]—This statement may to some appear a subject of ridicule and laughter, but I am sure there are many who do not so receive it. Men of mean or of no education—men on whom such an observa-

tion as this was intended to operate—men who do not feel that such a slander is too contemptible to affect the character of the noble lord—may express approbation at the statement of it—no others can, I am persuaded.—Many, perhaps, may; and it is not unlikely that persons of that description would take it for granted, on the credit of this writer, that lord Ellenborough is such a monster; that he is devoid of all the common feelings of humanity; that, if he had ever been actuated by such feelings, he has entirely excluded them from his breast, and that, as a judge and a man, he has so conducted himself, that it is even doubtful if he has come into the world in the ordinary way. With persons better disposed, such an observation can have no such effect—with my learned friend it can have no such effect!—I know the capacity of his mind and the extent of his understanding;—I know what doctrines are his own and what doctrines he may state from the instructions of others; but these are men of a different description—men, on whom such a statement as this will have a different effect, and they are the men on whom that effect was intended to be produced.

The writer ends the libel with saying, “If the passenger had behaved ill, which does not appear, I doubt whether the captain could legally forbid him to walk in any open and public part of the vessel, and his doing this was an affront which would have authorized the offended person to have chastized him the first opportunity he met him on shore. To order him, after this, to the spot whence he had excluded him, was insolent and tyrannical, and it much grieves me to find a conduct so flagitious even palliated by the chief-justice of England.”—Now this is giving such a colour to the case as is quite unwarranted—it is inferring that the captain had not a right to prevent a person, who was not a cabin-passenger, from coming upon the poop, which was appropriated to cabin-passengers only.—He says the doing this was such an affront that it authorized the passenger to chastize the captain the first opportunity he met him on shore—that he was justified in personally chastizing him the first time he should meet him out of a ship.—This is really a doctrine which it is impossible to defend or mitigate—he says, that, to order him, after this, to the spot whence he excluded him, was insolent and tyrannical, and it much grieved him to find a conduct so flagitious even palliated by the chief-justice of England.—Now, because lord Ellenborough weighed all the circumstances of the case in the scale of justice—because he stated what operated in favour of the plaintiff, and what operated in favour of the defendant;—because, in short, he did not sum up the whole case in favour of the plaintiff; he is held up to public abhorrence and detestation by the author of this libel.

Gentlemen, one word more upon that part

of the libel in which so much is said of the observations of lord Ellenborough. The author of this publication is arraigned for stating that, in any degree, the conduct of lord Ellenborough was not laudable. He says that the plaintiff received no wages as a soldier or a seaman, and that he was under no obligation to risk his person in the defence of the ship. His words, in the former part of the libel are—“Was he enrolled or registered as one of the crew? Did he receive the wages of a soldier or a seaman?—Had he any share or concern in the property or merchandize of this vessel?”—He states, in short, that there was no call upon him to take any part or concern in the defence of the ship. That may be the feeling of the author of this paper, but it is not consonant to the feelings of an Englishman to refrain from voluntarily rendering his assistance for the protection of the property of his fellow-subjects, if it is endangered by the attack of a public enemy;—and I am at a loss to conceive what expectation the author could have had of gaining credit with the public by such an assertion. I am at a loss to imagine with what part or portion of the public it was that he hoped to gain credit or applause for a doctrine so very hostile and repugnant to the natural feelings of every good, brave, and loyal Englishman—that no man who is not hired, that no man who is not paid as a soldier or a sailor can have an innate call suggested either by his personal spirit, or his public duty to the community, to defend the lives or property of his fellow-subjects from the enemies who may threaten both! I trust in God we may place more reliance on the public voluntary zeal, valor, spirit, and patriotism of Englishmen, than this person is willing to ascribe to them.

I perfectly agree with the doctrines laid down by lord Ellenborough upon the occasion of this trial. It was stated that it was an insult to the plaintiff to place him to defend the poop, whence he had been removed by the defendant. Now, all that was put by his lordship to the jury was this, and I think it was put too strongly in favour of the plaintiff:—his lordship said that it might have been considered as an insult, that the plaintiff was put to defend the place from which he had been removed.—I, for my part, think it was no insult, and that the removal was not disgraceful to the plaintiff. However, the plaintiff had the full benefit of the observation.—But, how did lord Ellenborough conclude? He said “I think he would have consulted his honour if he had said to the defendant, I will show you the difference between your conduct and mine,—you removed me from a place where I wished to be for the purposes of my comfort and recreation, and now you call upon me to defend that place; I shall be proud to defend even that place from which I was removed.” That was the conduct which lord Ellenborough recommended as that which ought, under such circumstances, to have been

adopted by the plaintiff, Mr. Boyce;—such was the language of the noble lord,—and it is only for having used such language that he is held up by this libeller as an object of public detestation and abhorrence.

Is it the opinion of this author that none ought to exert themselves for the protection of the property, lives, and liberty of their countrymen and fellow-subjects, but those who are paid for so doing? Is this the sentiment by which he is actuated? Is it his opinion that we are to deliver ourselves up to the enemy, except when we can secure ourselves by a paid force? If that be his opinion, it is most mischievous and dangerous;—it is an opinion as diabolical as it is revolting to the feelings of every Englishman;—it is an opinion unworthy of any man whose veins are filled with British blood. I cannot (and I am sorry to say it) but collect from these papers, that such is the opinion of their author; I cannot but persuade myself that it is his object to impress such an opinion on the minds of the inconsiderate part of the public, and that he wishes to prevent them from offering their voluntary services to the country, whenever at a time of danger the country may stand in need of their voluntary assistance.

I am sorry, gentlemen, to detain you so long, but it is not my fault. These libels are of such mischievous and pernicious tendency, that I feel it my duty to point out to you how it is intended by the author that they should operate. As he is malevolent, so he is persevering. These publications which I have stated to you took place in the month of December, 1807. On the 17th of January, 1808, we have another libel, and upon another subject;—I have stated to you, or rather I have read to you, parts of the former libel, in which the writer alluded to the trial of a person of the name of Dickie. He did not, in that publication, say, that the cause, in which that man was the defendant, was tried before lord Ellenborough, but he does afterwards. You find he had insinuated that lord Ellenborough had procured from the jury a verdict of 700*l.* against a man, for loose words, spoken in an alehouse, over his cups, and when he was possibly not in his sober senses, and yet that, in the present case—I mean the case of Boyce and Bayliffe—he had only procured from the jury a verdict to the extraordinary amount (which he blushed to name) of 80*l.*—He then contrasts the one case with the other, and, in order to contrast them, he misrepresents them.

The libel I am now going to state regards the conduct of the noble lord, with respect to the case of this man named Dickie.—Mr. Aris, governor of the Cold-Bath-fields prison, had brought an action against Mr. Dickie for defamation, and had recovered 700*l.* damages. The facts were shortly these: a man of the name of Chenou had been confined in that prison, and had died there;—a man of the

name of Johnson, a mutineer, had also been confined in the same prison, but he had been discharged, and had died out of it. Mr. Dickie chose to impute to Mr. Aris, that he had murdered these men. The charge was not made in a common alehouse over his cups, or when he was possibly not in his sober senses, but it was made gravely, coolly, and deliberately. A coroner's inquest was held, as the law requires in all cases where a person dies in prison, which inquisition was taken before Mr. Shelton.

A second inquest was held before the same Mr. Shelton, who fills the office of coroner—perhaps he may be known to some of you; I believe there never was a man who executed any office with more fidelity, or with more regard to the interest of the public than this gentleman does:—Mr. Dickie attended both these inquisitions—he brought forward every fact he could collect, it being his avowed object to get a verdict of murder against Mr. Aris. Every thing he produced—every circumstance he brought forward was submitted to, and fully investigated by the jury, who, after a full, patient, and impartial hearing declared by their verdict, that these persons had died by the visitation of God. Notwithstanding this ineffectual attempt to procure a verdict of murder against Mr. Aris, Mr. Dickie afterwards, not in a common alehouse, nor in his cups—not when he was not in his sober senses, but expressly, designedly, and deliberately said, that *Mr. Aris had murdered these two men*. He said this of Mr. Aris, the gaoler of the Cold-Bath-fields-prison—a man in a situation which rendered him most obnoxious to those who were likely to be influenced by such a charge against him, and were likely by such a charge to be stimulated to acts of personal vengeance. He said that Mr. Aris had murdered these men, and that if Mr. Shelton would have heard the evidence, there would have been no doubt of his guilt. Now a more grave, deliberate, and malevolent charge could not have been brought against such a man as Mr. Aris, or a charge more rancorously persevered in. Upon a consideration of all these circumstances by the jury, a verdict was returned for the plaintiff with 700*l.* damages. The cause was tried before the lord-chief-justice. Now, hear what this author says.—I should state to you, that at a subsequent time (and after Mr. Dickie was in custody for these damages at the suit of Mr. Aris in consequence of his not being able to pay the damages) there was an insolvent act brought into parliament. A part of this libel refers to a clause in that act. An application was made by Mr. Dickie to the Court praying to be discharged under that insolvent act. He was not discharged; but remanded. Now this letter is signed “Junius,” which was the signature of the first letter, and you will recollect that the first letter had promised a discussion on the subject of Mr. Dickie's confinement. It is addressed to lord Ellen-

borough, and begins thus:—"My lord—The letter which I lately addressed to your lordship's consideration, was upon a subject deeply interesting to the feelings of every individual, and important to the community at large. I have reason to believe that it was not deemed unworthy of your attention, and that the principles which it endeavoured to inculcate have not been disregarded or despised. The case upon which I now venture once more to address your lordship, and solicit your favourable interposition, though widely different in its nature, is no less worthy of your immediate notice. My lord, a British subject is at this moment enduring all the aggravated horrors of a perpetual imprisonment merely upon a civil action for debt. I allude to the extraordinary and unprecedented case of William Dickie, formerly a stationer in the Strand, but now confined in the Fleet-prison, in consequence of a verdict of damages, amounting to 700*l.* obtained against him by Mr. Thomas Aris, the governor of Cold-Bath-fields-prison. The trial took place early in the year 1803, when Dickie was arrested, and being unable to discharge the penalty, still continues a close prisoner, without the smallest prospect of a release. Not long since, an application was made in the Court of King's-bench to procure his enlargement as an Insolvent debtor, claiming the benefit of an act lately passed; but the Court, after inquiring into the cause of his detention, and finding it to be for pecuniary damages in an action for defamation, refused his petition, and remanded him to gaol. At this time, it is worthy of remark, that neither the prosecutor, his solicitor, nor any other person, appeared in court to oppose his liberation." This observation is thrown in by the way, and the public who read this must take it for granted, that Dickie being in gaol for a sum of 700*l.* and an application having been made to discharge him under the Insolvent act, and the plaintiff making no objection to his discharge, the Court, of its own mere motion and accord, interposed its authority, and prevented the operation of that humanity which even the plaintiff, Mr. Aris, was ready to have shown:—that is the insinuation.—Now mark what is the truth.—Dickie was a person not falling within the range and scope of the act of parliament, and if he had been let out of custody without the authority of the Court, the gaoler who had charge of his person would have been answerable for the whole of the damages; and if he had been discharged even by the authority of the Court, it being a case in which the Court had no jurisdiction, the gaoler would have been equally liable to have paid the damages; therefore it was the strict and bounden duty of the Court to interfere, and prevent the act from being extended not only to Mr. Dickie but to all persons who did not fall within the purview of the act.—The intention of this writer is artfully to insinuate that the Court interfered without rea-

son in order to exclude him from the benefit of the act.

He proceeds, "For obvious reasons I omit, for the present, any comments on the nature and extent of the alleged offence, the character of the original prosecutor, and the subsequent verdict of the jury. I will suppose that the expressions uttered by the defendant were highly defamatory;" and so on; I need not read the whole of it to you. Then he proceeds to state his opinion with respect to the law in cases of criminal prosecutions for libels; then he states what is his conception of the law of civil actions; and in doing so he mis-states the law, in order that he may afford himself an opportunity of defaming the lord chief-justice. He argues most weakly, and, I think, most wickedly too; for it is impossible to conceive that a person who is capable of writing these letters, does not himself know better, or that he has not access to other persons who do. Speaking of civil actions, he says, "The complainant is the sole party in the cause, and looks only to his own personal exertions for justification and redress:" then he says, "it is absolutely necessary that the plaintiff should clearly prove some positive loss or real damage incurred, either in his person, his property, or his character, before he can be justly entitled to any indemnification or redress. Now, my lord, applying these observations in the present instance, we find that an action was brought against Mr. Dickie, for having uttered certain defamatory expressions of and concerning the character of governor Aris; and a verdict for pecuniary damages, awarded to the amount of 700*l.* is certainly neither light nor trifling: by many, they will probably be estimated as excessive, and therefore, according to the provisions of our neglected and almost-forgotten Magna Charta, illegal and unconstitutional; especially when they consider the character and situation of the respective parties, and the peculiar nature and circumstances of the case." This is holding out that the verdict for 700*l.* was found by the jury without any evidence at all; for it is stated, that it is necessary that the plaintiff should have clearly proved he had sustained some positive loss or real damage to that amount. Now the direct contrary is the law; and if it were otherwise, no man of good character, who could not prove that his character was taken away by a slanderous libel uttered against it, could maintain an action against any libeller, for saying of him, that he had been guilty of a murder, or any other offence in the catalogue of human crimes.

We will suppose that it was said of some mercantile or banking-house, in the highest credit and estimation,—for instance, the house of Messrs. Langston and Co., Messrs. Hoare and Co. or Messrs. Child and Co.—we will suppose it to be said of either of those houses, that, notwithstanding their appearance of wealth, the property of indi-

viduals was not safe in their hands; for that it would not be many months before their names would be announced in the Gazette. Such an assertion, probably, would not obtain belief; it would not, in the slightest degree, affect their credit, and, consequently, according to the doctrine of this author, unless they could actually prove that they had lost their customers by the effect of such a slander, they would not be able to maintain an action for damages. Yet how often do we see such actions brought, and juries told from the Bench, that they are to look to the injury which *may* result from such slanders. It would unquestionably be highly improper, if no person, in an action for defamation, could recover more damages than he had actually sustained; and therefore the peculiar province of a jury is, to consider what is likely to be the effect of the defamation, and to appreciate the damages accordingly. This writer first misrepresents the law, and then he attacks the noble and learned judge for having suffered such a verdict to pass, as he says is contrary to the law he has so misrepresented.

He proceeds thus "I have not a report of the trial within my reach, but we are told, in a printed petition addressed to the members of the House of Commons, that, in the year 1803, the petitioner, Mr. Dickie, was arrested by Mr. Aris, and has ever since remained a close prisoner in the Fleet Prison; that, in consequence, he has been totally ruined in his business, deprived of the means of procuring a livelihood for himself or family; and, since his confinement, has been reduced to the necessity of subsisting on the precarious charity bestowed on the poor prisoners in that prison. The petitioner farther declares, that he is utterly incapable of paying the sum of 700*l.* or any part of it, and if the mercy of parliament be not extended to him, he must suffer perpetual imprisonment. He then expresses his sincere contrition for his conduct; and, as Mr. Aris produced no evidence to show that he had sustained any pecuniary damages, he hopes that the very long confinement which he has already suffered may be considered as an adequate atonement to the offended laws of his country. This unfortunate petitioner then concludes, with most humbly praying that the honorable members of the House will grant him such relief as may enable him to obtain his liberty by the Insolvent bill then under their consideration, that he may again follow his business, and earn an honest livelihood for himself and his helpless family." I think, gentlemen, you will ask the author of this most scandalous libel this question, "If you did take upon yourself to comment on the conduct of the lord chief justice and the jury in the case of Aris and Dickie; if you meant to give such comments to the public with candour and fairness; how happened it that you did not get a report of that trial within your reach before you published those comments?" I will tell you why

he did not; because the only pretext he can have for having published them is, that he was not truly acquainted with the facts upon which he was reasoning; it is therefore that he says, the report of the trial is not within his reach. But what does he rely upon as the true representation of the facts?—Why, it is the petition of the defendant to the House of Commons, praying that he may be discharged out of custody. He does not think proper to peruse a report of the trial, but he thinks himself warranted in taking the facts from the defendant himself, as he finds them stated in the petition presented by him to the House of Commons with a view to his discharge. Then he says, "Before I proceed, my lord, to notice the result of this petition, which was certainly couched in the most respectful and dutiful terms, and therefore fairly entitled to a liberal and unprejudiced attention, permit me to remind your lordship of the remarkable circumstance stated in the petition, 'That Mr. Aris produced no evidence to prove that he had received any real injury or pecuniary damage from the defamatory observations of the defendant.' If this be true, we are naturally led to inquire, why and upon what principle either of law or equity, for a few rash and intemperate expressions, hastily uttered and as quickly forgotten, a verdict of damages, to the extraordinary amount of 700*l.* (beyond either his means or his ability to pay), could by an honest and conscientious jury have been deliberately awarded to the plaintiff." Now, you see what a gross mis-statement of the law and of the fact this is: the object is, to hold up lord Ellenborough and the jury to public and general detestation; the former for having recommended and the latter for having found a verdict contrary to law, or at least contrary to that which the writer states to be law, as applicable to facts misrepresented by him, and which are in truth different from the real facts of the case.

He proceeds to say, "Surely, my lord, political prejudices and party feelings could have had no share in the verdict they gave! I hope not. I impute no intentional error to the individuals impanelled on this trial; but juries are men; and I must therefore excuse them for the frailties incident to human nature, since I cannot justify them on the score either of liberality or discernment." Now I agree entirely with this writer, that upon the facts and the law, as he states both the one and the other, this would have been an extraordinary verdict; but the facts and the law being opposite to what he has stated them to be, I say that he has perverted them both, in order to make his mis-statement a vehicle for slander and indiscriminate abuse. He adds, "For nearly three years had this unfortunate man languished and wasted his health and strength in confinement, when a noble and patriotic statesman stepped forward, and a bill was introduced into parliament for the relief of Insolvent debtors. Its huma-

nity was unquestioned, its policy and expedience were generally admitted (your lordship excepted), and it had nearly received the final sanction of that branch of the legislature of which you are a member, when you suddenly and unexpectedly started up in your place, and proposed the insertion of a clause, which was readily—too readily—adopted. refusing the benefits of this act to all those who were confined upon an action for defamation.” Now, gentlemen, that a clause was introduced by the noble lord, under the operation of which, Mr. Dickie, as well as many other persons, was prevented from taking the benefit of this Insolvent act, is true; but it is not true, as the writer of this libel represents and wishes to insinuate, that it was a clause intended for the malevolent and foul purpose of meeting the individual case of Mr. Dickie. On the contrary, it was a general clause, and was precisely similar to what had been introduced into former Insolvent acts. It was a clause which enacted, that no man who was in confinement for damages awarded against him for criminal conversation with the wife of any person, or for having seduced any man’s daughter, or for any malicious mischief towards the person who held him in confinement for the damages given for such injuries, should be entitled to the relief which was afforded to others who did not come within that description.

Mr. Dickie was not particularly intended to be alluded to by that clause; the clause stands in the statute book, and might have been referred to by this writer; but I suppose the statute book was not at his hand, any more than the report of the trial was. He would have it insinuated, falsely insinuated, that the clause pointed at Mr. Dickie. It was extremely material to him to insist upon this part of the case, in order to raise an opinion in the public mind, that such had been the conduct of lord Ellenborough; and you will see how he builds his other arguments upon it. You observe that the author of these libels had before stated, that, looking into the transactions of our courts of justice, he should have been led to suppose that he was living in the latter end of the reign of James the Second, and not in the reign of George the Third, the father of his people. He goes on, in the libel which I am now stating to you, to say, “It is difficult to conceive an adequate motive for this new and unprecedented regulation! I do not say, and heaven forbid I should believe! that it was with a particular reference to the individual case of Dickie, that you proposed this obnoxious amendment: but I do say, that it completely produced the effect of depriving him of all hope of future consolation, and dooming him to end his days in gaol. You are therefore, if not designedly, at least accidentally, the sole as well as original cause of his cruel detention. Were it possible to en-

tertain an idea that your lordship, in proposing this new and extraordinary clause, was influenced by personal motives or vindictive resentment, horrible must be the prospects of those hapless victims who at any time may await your judgment or come within your reach! The infamous Jeffries would sink to nothing in comparison with a character who could wear the ermined robe of justice only to conceal the dark workings of a black and malignant heart, and prostitute the venerable functions of a judge to ministerial tyranny and individual oppression. I sicken at the thought! My only hope would be, if ever such a wretch should stain the mercy-seat of England, or pollute the sacred fountain of our holy laws, that he should quickly meet the fate of Jeffries, and be torn in pieces on the bench. I have still much to add, but the length of this letter obliges me to conclude, and apologize to your lordship for requesting your attention to a future letter, when I shall have a suitable opportunity to resume the subject.” I think, gentlemen, it would have been difficult for the ingenuity of man to have devised any thing more mischievous or malignant, or better contrived, if the materials to be worked upon were to be found in this country, to produce the object this writer had in view by these publications.

I state broadly, distinctly, and without the fear of being contradicted, that his object was to bring the administration of the law and the justice of the country into contempt. I state with confidence to you, that the immediate means by which he proposed to produce this effect, were the holding up to public detestation and abhorrence those to whom the execution and administration of the laws are entrusted. I state to you, confidently, also, that the object of this writer, in taking incidentally into his consideration the event which occurred in the reign of James the Second, of a mob having executed their vengeance on judge Jeffries, was to instigate a mob to treat lord Ellenborough, in the reign of George the Third, as judge Jeffries had been treated by a mob in the reign of James the Second. I ask you to look at the paragraphs in the letter signed, A Seaman, and to look also at the former libels, which state, that a person contemplating the proceedings of our courts of justice, would suppose himself living in the reign of James the Second, instead of George the Third the father of his people: and I desire you, too, to look at the passage which suggests a wish that the noble lord may not have been influenced by such motives as actuated judge Jeffries, but at the same time expresses a hope, that if he is influenced by such motives, a mob will treat him as a mob had before treated judge Jeffries, by tearing him from the seat of justice.

* See the proceedings on the motion for a new trial *infra*.

Putting all these things together, I ask you whether it is or is not the tendency of these libels to produce such an effect with regard to the noble lord in particular, and whether, in their general result they are or are not likely to produce the farther effect charged in the information, namely, to bring into contempt the laws and administration of the justice of the country, by holding up its judges and juries as objects of public execration, abhorrence and detestation.

Gentlemen, I shall prove the publication of these libels, and I cannot entertain a doubt that you will immediately find both the defendants guilty.

The usual evidence of publication was given.

DEFENCE.

Mr. Clifford.—Gentlemen of the Jury; It now becomes my duty to address to you some observations on the part of the defendants, in order to induce you, upon a fair examination of these papers, to give a verdict in their favour. But I must admit that I feel it absolutely requisite to claim on their behalf a considerable portion of your kindness and indulgence, and the more particularly as I have, on the part of these two individuals, to address you in a case where I have not only to contend against the whole power of the treasury and the government, but where I stand alone and unsupported against the united powers of persons possessing the most consummate talents and the greatest experience in the profession.

Gentlemen, before I state the case itself on the part of the defendants, or make any observations on that case, or the nature of the defence for their conduct which I shall offer to your consideration, I feel it incumbent on me, at the outset, to say a few words with regard to some parts of the speech of the attorney-general, of which I think I have some reason to complain. I have always understood, and I am persuaded that the attorney-general will agree with me, that an attorney-general who professes to prosecute for the public has two duties to fulfil—the one is to bring forward and conduct such prosecutions on the part of the crown as are necessary for the furtherance of public justice; the other is to take especial care that none are brought forward, unless he is fully impressed with the conviction that it is requisite and necessary to the public interest and welfare that they should be submitted to the consideration of a jury: but above all, there is a farther and no less important duty imposed upon him, which is, when he has brought a case forward and it comes to be tried, to let it stand on its own merits, without using any inflammatory language, or addressing himself to the passions of the jury. I shall, I also assure myself, have his assent to this proposition—that any case, which, on the part of the prosecution, requires such aids as these,

is not, cannot be a case in which a jury ought to be called upon to convict a defendant. Now it seems to me that two topics have been urged by the attorney-general which, in the fair exercise of his public and professional duty, it would have been better if he had altogether omitted. He began his statement by making an apology for himself. He observed that the defendants had no reason to complain of any severity he had exercised towards them—that as to them he had been “abstinent”—I think that was his expression—and that any person, who had been in the habit of reading the weekly productions of the author of the Independent Whig, must have considered him to be abstinent indeed, in not having earlier instituted any prosecution against that paper.

What does that mean? Has he, or could he have given in evidence the different papers published by the defendants from time to time, in order to show that they were aggravations of these particular publications? Could he have given such evidence, with a view of showing that the defendants were in the habit of uttering weekly libels, and that at last their publications had arrived at such a climax of libel, that he was put to the absolute and imperious necessity of stopping their continuance?—He has not done so—he could not have done so—and therefore topics of this kind can only tend improperly to prejudice the minds of the jury. I cannot avoid saying that I think the attorney-general would have better consulted his duty, the dignity of his office, and his professional character, in altogether forbearing to introduce such topics. But this is not all that he has stated as to the conduct of the author of the Independent Whig:—for he says that the author of the Independent Whig shall not find in him an enemy—that if the printer and publisher of that paper shall confine themselves to what he conceives to be the proper line of their duty, they shall find him merciful towards them, and not their enemy. What the future conduct of the attorney-general towards them, or towards any other persons who may unfortunately become the objects of his prosecution, may be, I know not; but I know that it is a matter with which you cannot possibly have any concern. It can only, gentlemen, have been intended to produce this effect on your minds—that if you entertained any doubts, as I trust you do, whether you ought to convict these defendants; that if those doubts arise from a feeling that the punishment for a libel, such as the attorney-general has described this to be, may be too severe for the offence these defendants are alleged to have committed; that if you have any such doubts, you will remove them from your breasts. “I am,” he says, “such an extremely merciful attorney-general, that these defendants are quite safe in my hands—do you only convict them, and then, if they behave themselves to my liking, I will take

care that their punishment shall be slight." That is the only interpretation which can be put upon these expressions, and, in my opinion, it would have been better had they been spared.

The attorney-general has introduced another topic, and which might as well have been omitted—he has introduced to you his school-boy days, when he and lord Ellenborough were acquainted. He has told you that they were educated at the same college—that they were brought much together in the course of their professional duties—and, in short, that they have always been on the very best terms. What, let me ask, have their friendships to do with this cause? Why endeavour to awaken all your sympathies and tender feelings, only in order to press them against the defendants? and then, lest what he has so stated should produce the effect with which he acknowledges it was likely to be attended, he says to the jury—"But I call upon you to dismiss these circumstances from your minds—I call upon you to recollect what has always been the conduct of lord Ellenborough—I ask you, whether he has not been always desirous of addressing to juries such observations as were best calculated to induce them to administer impartial justice?—I ask you, whether, when he has perceived juries inclined to be hasty in their determinations, he has not on all occasions urged them to pause, that they might come to a fair conclusion?"—Now, what has all this to do with the present trial?—One would have thought—I am sure I should have thought, if I had come into court while the attorney-general was in this part of the case—that instead of this being a prosecution against the two defendants for printing and publishing a libel, the jury were trying some charge, in which the lord-chief-justice was the person accused, and that the attorney-general was calling witnesses to the character of the lord-chief justice.

The character of the lord-chief-justice has nothing to do with this case. We are not trying his character, either in general or in particular instances. The only question before us is, whether, with respect to the two cases of *Boyce and Bayliffe*, and *Aris and Dickie*, these comments published by the defendants constitute a libel. Now, I beg to say that I conceive the character of lord Ellenborough has nothing to do with the question which you are called on to consider.—Whether he is a good or a bad judge has nothing to do with this case. Whether his decisions have been just or unjust—whether he has conducted himself well or ill—all these things I put out of the question; and if I mention the name of lord Ellenborough, I must be considered as mentioning it without either praise or blame, for either would misbecome me. It is a dry question whether now, for the first time, it shall be said, that a British subject shall not discuss the proceedings of a court of justice,

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in such a way that what he publishes cannot justly be imputable to him as a libel.

Having said thus much as to what has fallen from the attorney-general, I shall state what, in my conception, the case before you really is; and as I intend to insist strongly upon the construction of an act of parliament which passed in the year 1792, it may be desirable to enter upon the consideration of what was deemed to be the law of libel previous to the passing of that act, and what was the evil intended to be remedied by it. I am happy that I shall be enabled to do so shortly. The principal case on which all the strange law and doctrine of libels is founded, was a case in the Star-chamber, in the reign of James the first; and there, though the case was not before them, they came to some extraordinary decisions, which have been since acted upon till the year 1792.

The case in the Star-chamber was one in which the archbishop of Canterbury complained of a song, which he alleged had been written for the purpose of turning him into ridicule; and the judges having decided that it was a libel on the archbishop of Canterbury, the members of the Court (I suppose, because they had nothing else to do) sat down and resolved what should be deemed a libel in future; and they resolved, that whether you speak what is true or what is false, whether the words are spoken of a private person or a magistrate, whether they are spoken of the living or the dead—in either of these cases it is a libel; and for this reason with respect to the last, that if you speak of the dead it may excite the passions and resentments of those who survive them, and urge them to commit a breach of the peace; and if it be of a magistrate who is dead, it is a libel not only upon him personally, but on magistracy itself, which never dies. So, gentlemen, I am afraid that in some of the observations of the attorney-general, in which he has not handled the character of judge Jeffries very gently, the attorney-general himself, according to the doctrine of the Star-chamber, has been guilty of a libel on magistracy, because magistracy never dies.

This doctrine having been laid down, it soon was pushed to a very considerable length, (and I think this prosecution is endeavouring to revive it)—for in the reign of Charles the second, the opinion of the twelve judges was taken, whether it was lawful to write any thing of government and courts of justice, without leave of government; and the unanimous opinion of the judges is delivered by chief justice Scroggs, in the case of *Henry Carr*,* who was tried for a libel—that if you write on the subject of government, whether in terms of praise or censure it is not material; for no man has a right to say any thing of government. When the Revolution

* 7 How. St. Tr. 1127.

came, that absurd doctrine was done away; but the whole of the doctrine and law of libel was not done away; and from that time down to the passing of this act, in 1792, the uniform direction of the judge to the jury was, that when they were to decide upon a prosecution for a libel, the only question for their decision was, whether the words were published by the defendants or not? but that all the rest was a question of law, which the Court was to decide—and so strongly was this put in the case of the dean of St. Asaph* that when lord Erskine, who was counsel for the defendant, put it to the jury, whether, in point of law, the publication amounted to a libel, the answer of the judge was, that the question of 'libel or not libel' appeared on the record; that it would be returned by the Court, and that the jury were only to find the fact, and the Court would decide the law—so that by this doctrine, juries were brought into this strange dilemma, that when they gave their verdict, no person was competent to say what it was they meant to find—they were compelled to find a verdict of guilty, without being told it was an offence, and without having the right to decide whether the charge was an offence or not.

To remedy these incongruities, this act was passed. It was not an act to introduce a new law, but to remove doubts with respect to the functions of juries. If it had been an act, introducing a new law, it would have so far acknowledged those doctrines I have been speaking of, and would have given a parliamentary and legislative admission, that they were, theretofore, consistent with the law; but owing to the struggle of many patriotic persons in parliament, and particularly of that great statesman who had been the means of introducing the bill, and the learned lord I have just mentioned who supported it, the doctrines they maintained and contended for were established, and the act is only an act to remove the doubts that previously existed. It recites that "Whereas doubts have arisen whether, on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant, or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same, to give their verdict upon the whole matter in issue: be it therefore declared and enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, that, on every such trial, the jury sworn to try the issue, may give a general verdict of guilty, or not guilty, upon the whole matter put in issue upon such indictment or information; and shall not be required or directed by the Court or judge before whom such indictment or information

shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants, of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information." Then there is another clause—"That on every such trial, the Court or judge before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the king and the defendant or defendants, in like manner as in other criminal cases."

Now, gentlemen, before I make any remarks on the first clause, I cannot forbear making a few on the second; and it is owing to an expression which fell from the attorney-general on a former trial. Undoubtedly, you will be glad on this, as on every occasion, to have any directions addressed to you by the learned judge, and especially with regard to what he considers to be the law. What I allude to is the construction of the attorney-general with respect to the intention and principle of this act of parliament. He stated, that the learned judge would, in his directions to the jury, give them his opinion whether the publications were libels. He stated, that it was the duty of the learned judge so to do—that he was bound to state to the jury what was his opinion. If that be the construction which the attorney-general puts upon this act of parliament, with great deference I must be allowed to say, I entirely differ from him—for what does the clause of the act say?—But first, I should recall to your memory, that before this act, the judges held that it was for the court, and not the jury, to decide the question 'libel or no libel?' and the opinion of the twelve judges was taken upon the propriety of passing the act; their opinion was, that it would be giving to the jury the privilege of the judge, and altering the law of the land. It was necessary that the objection should be obviated, and with that view the second clause was introduced into the act. The clause does not merely say that he shall give his opinion to the jury; but it says he shall give his opinion *in like manner as in other criminal cases*. Now, gentlemen, the attorney-general stated that, under these circumstances, it was imperative upon the learned judge to state, whether, in his opinion, this was a libel? If it be imperative on the learned judge to give his opinion, I can only say that it is, and can only be imperative upon him to give it *in like manner as in other criminal cases*, and not in a manner contrary to that in which the opinion of the judge is given in all other criminal cases. Now, for example—we will take a case of murder: What would you think if a judge, addressing a jury upon a trial for murder, were to say—"Gentlemen, this is the evidence before you—you yourselves have heard it—but, never-

* 21 How. St. Tr. 847.

theless, I am bound to tell you, that, in my opinion, this is a foul and horrible murder, and the prisoner is guilty." Why, who ever heard of such a charge? No judge would give such a one to the jury—a judge would say—"You have heard the evidence by which it is endeavoured to be shown that this man's death was caused by such a person—you have heard all the circumstances, and you will weigh in your minds whether he did come to his death by such a person, and you will also say whether there was such a provocation on the part of the person killed, as, instead of making the offence amount to murder, may reduce it to manslaughter, or justifiable homicide. You are to take these things into your consideration, and you, having the law and the facts before you, are to draw the conclusion." Such would be the language of a judge to the jury, in the ordinary case of an indictment for murder. So I say, that the meaning of this act of parliament is not to allow the learned judge to say, that in his opinion the publications are libels; but he is only authorised to say, that if, in the opinion of the jury, they were published with the particular intent charged, then that in point of law they might amount to a libel; but that if they should think they were not published with the criminal intent charged, then that they would not amount to a libel.

I have thought it my duty, as I conceive that to be the true construction of the law, to take the first opportunity of stating how I differ from the attorney-general. Such being the act of parliament which imposes on the jury the duty of giving their verdict according to the whole matter in issue, the case comes to this point, namely, what is the matter in issue which you are to try between the crown and these defendants? The matter in issue is this:—The information charges that these defendants, maliciously devising and intending to bring the administration of justice in England into hatred and contempt, and to raise and excite disaffection and discontent in the minds of the people, did publish the libels in question, at least what are called libels. I might admit, for argument's sake, that every word of these publications was a libel on the private character of lord Ellenborough—I might admit that it was a libel on a variety of other persons—I might admit them to be the most infamous libels—still I contend that you could not find the defendants guilty, merely upon the fact of their being such libels—you must find that the motive with which they were published was wicked and malicious; that their motive and object was to vilify the lord chief justice—to defame him in his private character—to bring him into contempt as a peer of parliament—and to bring the administration of justice into contempt in the minds of the people. By whatever other motives they might have been actuated, they are not charged in this information; and whether you pronounce the defendants guilty or not

guilty, it must be on the ground that these papers were or were not published with the motives that have been ascribed to them.

Having stated this by way of argument, I would not have it understood that I mean to cast the least reflection upon the private character of lord Ellenborough.

There is one other point on which you ought to be perfectly satisfied before you deliver your verdict, and before I sit down I shall make some observations on that part of the case. Even if you should be of opinion that the papers were written with the malicious intent imputed to them, that would not be sufficient to warrant a verdict of guilty. It must clearly appear to you that the publication is a publication in London—if these papers were published in Middlesex you have no jurisdiction, and if you return a verdict of guilty, it must be on the ground that you are convinced these papers were published in London, and not elsewhere. I shall state to you how the evidence bears upon that fact; but as that is only one branch of the defence, I shall go through the rest of the case first.

In considering the motives by which the defendants were influenced, I hope you will not think it right to take, as the attorney-general has taken, detached parts of these letters, and to say that although there are some parts to which we can attach no blame, there are other parts in which there are hot, hasty, and intemperate expressions; that these cast a suspicion over those parts which are in themselves innocent, and therefore if we can pick out different parts that have such a bearing, on the whole we will convict them. No: the way in which they should be tried, is, to take the whole of the letters, and from their whole contents taken collectively, to see the workings of these men's minds—to see, from a fair perusal of the whole, whether the motive by which these men were influenced, could possibly be to traduce the lord chief justice, and to bring the administration of justice into contempt; and if, upon such a fair and candid perusal of the whole subject matter of the letters, you should find the writer in the course of debate, or in the warmth of argument suffering language to escape him which can only be the result of his too strong feelings, punish him not for expressions which are not correspondent with the motive, but rather in justice let the motive do away the mischief of the expressions, and occasion them to be entirely obliterated from your minds.

In considering these letters, there is one observation to which it may be important for you to attend, which is, that these letters are not only published in a newspaper, but they are not published by the defendants themselves—I mean that they are not written by the defendants themselves. A weekly paper does not fill its columns as a daily newspaper does, with remarks of the editors or proprietors themselves; but they dedicate a

certain portion of their paper to discussions of different kinds, and when a subject has been once introduced, they allow persons who are so disposed, to insert letters in answer to what has been before stated. Now, these letters being of this description, and a great part of this paper being generally written by the proprietor himself, contrary to the practice of other weekly papers, and the attorney-general never having fastened on any thing that came from the defendant himself, and the attorney-general never having found fault with one word of the editor's own writing, the fair conclusion is, that the defendant, who is supposed to be the libeller, has himself uniformly taken care to do nothing which could give offence, and to keep himself within the line of that duty, which if he perseveres in, is to entitle him to the future protection of the attorney-general. These letters were sent for insertion in *The Independent Whig* in this manner. Surely, then, you will look with a less vigilant eye to the construction put upon them as hostile to the lord chief justice, for you cannot expect that the proprietor of a newspaper in inserting such letters as these, can, in the multiplicity of his business, cast more than a bird's-eye view upon them. He cannot consider them with so much attention as he would be enabled to give to what he writes himself, and when you find that he never does violate the law himself, surely, the conclusion is, that if he inserted any thing which the attorney-general thinks a libel, he did so unguardedly and unawares, and that he would not have done so if he had had the least idea that it was libellous.

If such be the case, the mere fact of its being published in a newspaper ought to make you think more lightly of it; if instead of having been published in a newspaper it had been found in a pamphlet written by some learned person—I see the attorney-general stare at what I am stating: I am not surprised that he does seem to consider the argument worthy his attention. It is not a doctrine of my own, for I find it laid down by great authority. In a case of this kind, which I think is as important to the crown as to the subject, I should be sorry to state a broad proposition to you, unless I was backed by authority and precedent. I allude to a very memorable case which was tried before lord Kenyon, in Westminster-Hall—the case of Mr. Stockdale, who was tried for a libel on the managers of Mr. Hastings's trial. The book had been written by a clergyman in Scotland, and was a very able performance; and the attorney-general of that day (the present lord-chief-baron) in stating to the jury what made the work additionally vicious and what more peculiarly called upon them to convict the defendant, lays down this as law:—"This, I should however mention to you, is a libel of a more dangerous nature than the ribaldry that we daily

see crowding every one of the prints which appear every morning upon our tables: because it is contained in a work which discovers the author of it to be by no means ignorant of the art of composition, but certainly to be of good understanding, and by no means unacquainted with letters. Therefore, when calumny of this sort comes so recommended, and addressing itself perhaps to the understandings of the most enlightened part of mankind, I mean those who have had the best education, it may sink deep into the minds of those who compose the thinking and the judging part of the community; and by misleading them, perhaps, may be of more real danger than the momentary misleading, or the momentary inflammation of men's minds by the ordinary publications of the day."* So you see here, that in accounting for the grounds of the prosecution (which was also a prosecution for commenting on the conduct of courts of justice) the attorney-general explains the reasons that induced him and the House of Commons to institute the prosecution; and the reasons were, that the libel was not contained in a newspaper which would have passed away with the day; that it was not one of the light performances that usually issued from the press; but, that it stood as the work of an able and learned man, and that, therefore, it was likely to sink deep into men's minds, and do that mischief which the publications of the day would not do. Such being the case, I hope you will bear it in your minds.

Now the ground upon which I mean to defend the present case is, by contending that this is a discussion of what has taken place in a court of justice, and by comparing it with similar discussions respecting the speeches or the proceedings which have taken place in the House of Parliament. The very fact of its being a discussion of the conduct of government, necessarily occasions one to augur *prima facie* that it is not a libel; for I have no hesitation in saying, that the language which is not a libel on private individuals, cannot, in a free country, be considered a libel if applied to courts of justice, or the proceedings of government. Every man has an interest in the conduct of government and courts of justice; and the keeping them in what the public may think due order is one of the principal safe-guards of a free state: it has been one of the principal means of keeping this country free and independent, amidst all the storms and revolutions that have convulsed Europe.

I am not advancing doctrines of my own. On this most material part of the case I wish to give you authority for the doctrines which I shall assert to be the true doctrines of the constitution of this country. A learned person who writes expressly upon the con-

* R. v. Stockdale, 1 How. Mod. St. Tr. 249.

stitution of England (I mean Mr. De Lolme) in talking of courts of justice holds this language—he is speaking of the right of juries to acquit in cases of libel—he is stating, that notwithstanding juries are not supposed to investigate the truth of a libel, yet, if they choose, they may do so:—then he goes on to state this, “And it is still more likely that this would be the case if the conduct of the government itself was arraigned; because, besides this conviction, which we suppose in the jury, of the certainty of the facts, they would also be influenced by their sense of a principle generally admitted in England, and which, in a late celebrated cause, was strongly insisted upon, viz. that *though to speak ill of individuals deserved reprehension, yet the public acts of government ought to lie open to public examination, and that it was a service done to the state to canvass them freely*”*.—Now, this principle which he has quoted, is taken from the speech of Mr. Sergeant Glynn, in the case of Mr. Woodfall. My learned friend, the attorney-general, will perhaps say that Mr. De Lolme is no great authority. Now certainly that writer is open to such an observation; but I quote him with particular pleasure, because he was a man who had applied his mind peculiarly to the constitution of England, and to what it was in that constitution which distinguished us above the other nations of Europe, as possessing the blessings of freedom in a more eminent degree. I mention this as a principal reason for considering him one of the best writers to refer to upon the subject. I will state to you how a learned author of our own country speaks of him.—Mr. Jeremy Bentham, in speaking of his book, and comparing it with Mr. Justice Blackstone’s Commentaries, uses this expression:—“Blackstone copied, but De Lolme thought.”—Therefore, in the application of the doctrines as stated by Mr. De Lolme, I am not afraid of their having the less weight because he was a foreigner.

I stated to you that it was a case in the Star-chamber on which all the law of libels was built. It was a doctrine new at that time; and even in the reign of James the first—a reign not very favourable to liberty—it even then gave the alarm as a dangerous doctrine and likely to be subversive of the government and constitution. It was the restraining the freedom of the press that occasioned the rebellion and the death of Charles the first upon the scaffold. A person, who was Dean of St. Paul’s and preacher at Lincoln’s Inn, had the instant that case in the Star-chamber appeared, published against it as containing doctrines dangerous to the constitution—the person I allude to was Dr. Donne, and the words he used on the subject of that decision are these; he says, “There may be many cases where a man may do his

country good and service by libelling; for where a man is either too great, or his vices too general, to be brought under a judiciary accusation, there is no way but the extraordinary method of accusation; and, I have heard that nothing hath souped and allayed the Duke of Lerma so much as the frequent libels made upon him. Sealed letters in the Star-chamber have now-a-days been judged libels.”

Now, from this quotation I infer that even at the time when the doctrine was introduced, this learned writer, a cautious man, thought, that so far from publishing any thing openly of the conduct of government being an offence, it was injurious to check such publications, and that nothing was so great a duty from an individual to the public, or could be of more service to the public, than freely to examine the conduct of government. At that time the doctrine of the court of Star-chamber was held up to public execration by Dr. Donne—it has been since held up to public odium by Mr. Sergeant Glynn, in the case of Woodfall, and by the learned lord whose name I have already mentioned, in the case of Stockdale; and, in fact, in every case of the kind that has been brought before a jury. As I have mentioned Mr. De Lolme, I cannot help reading another passage from his celebrated work; he says—“And it is this public notoriety of all things that constitutes the supplemental power or check, which, we have above said, is so useful to remedy the unavoidable insufficiency of the laws, and keep within their respective bounds, all those persons who enjoy any share of public authority. As they are thereby made sensible, that all their actions are exposed to public view, they dare not venture upon those acts of partiality, those secret connivances at the iniquities of particular persons, or those vexatious practices, which the man in office is but too apt to be guilty of, when, exercising his office at a distance from the public eye, and, as it were, in a corner, he is satisfied, that provided he be cautious he may dispense with being just. Whatever may be the kind of abuse in which persons in power may, in such a state of things, be tempted to indulge themselves, they are convinced that their irregularities will be immediately divulged. The jurymen, for example, knows that his verdict—the judge, that his direction to the jury—will be presently laid before the public: and there is no man in office but who thus finds himself compelled, in almost every instance, to choose between his duty and the surrender of all his former reputation.”*

Now, it does seem to me, that one principal object of this prosecution is, to destroy that check which, at all times, has been so beneficial to the interests of this country; or,

* De Lolme on the English Constitution, 298, ed. of 1816.

* De Lolme on the English Constitution, 299.

if not to destroy it, at least to cramp it; for in such a case as this, without its being stated how far you may go—where decent and fair discussion is to be distinguished from that which is not so—where libel begins and fair examination ends—I would ask you whether, without any rule of conduct being laid down by the attorney-general, without any guide being pointed out for men to follow, any man would dare to censure any thing which he may think erroneous or wrong on the part of government, if he is to be drawn into such a heavy expense, as he must necessarily be, by being brought into this Court? And though he might not at the time he was uttering his sentiments, think that he was doing any thing wrong, or writing any thing that would be considered unlawful, if he is to be turned round by the ingenuity of the attorney-general's innuendos, and to be told, that what he has been writing is not fair discussion—that he, the attorney-general, will, by selecting passages from it, convince a jury, that it is not written in the spirit of free and impartial inquiry, but, on the contrary, it is a false and scandalous libel,—who, under such apprehensions, will ever venture to address the public on the errors of government?

Having stated this, I shall proceed to comment on the papers themselves, and though you have heard them read twice, yet I should not feel that I did my duty, if I did not go through the whole of them; for there are many parts which have not yet been commented upon, but which show and develop the mind of the writer; they were omitted by the attorney-general in his statement to you, not, I dare say, from any improper motive to prejudice the defendants, but because he considered it material to read those parts only which he thought criminal. My object is to draw your attention to the whole, because the one part is explanatory of the other, and if you find the general intention of the writer to have been good, I am persuaded you will give him credit for his good intention, and not punish him for the perhaps too great warmth of detached expressions.

I have already observed to you, that these were not the letters of the defendants themselves. The writer states, that he has taken the accounts of the trials, to which they refer, from the Morning Post and Morning Chronicle. Now, if the reports of the trials in those papers are incorrect, that is not the fault of the writer of these letters; the question is not whether the observations are just and fair as they may refer to the statement of the attorney-general, but whether they are just and fair with reference to the statement the writer of them found in those newspapers, and whether, from what the author found stated in those papers, he has rightly and honestly drawn his conclusions: the question is not, whether he has argued erroneously, for a man may lawfully discuss and

honestly conclude, but, at the same time, erroneously.

What the real facts of the case were may be discarded from your consideration, but look at the facts as they are taken from the Morning Post and Morning Chronicle, and say, whether it was not the duty of the writer of these letters, as an honest man, to animadvert upon those facts.

But to show you that the defendants were not themselves the authors of these letters, I would only observe that there is a note by way of correction, of what is stated in a former letter, and in one of the papers there is also an apology, for not having inserted on the preceding Sunday the letter to which it refers. Perhaps the attorney-general may say that this was a *fetch*—that the editor might have acted in this manner, in order that people might not suppose he was the writer of the letter.—Why should he have done so? He was not called upon by any necessity to do so. Whenever he wrote any thing himself, he fairly put his name to it; he had no reason to suppose that he should be prosecuted for these letters, and he knew perfectly well, whether he wrote them or not, their barely appearing in his newspaper would occasion him, if they were libellous, to be prosecuted for them. This, I think, is proof enough to convince you, that these letters were not the defendant's writing, and if they were not, then the remarks I have already made to you become applicable.

The writer begins by saying, "The magnitude and importance of the subject, to which I request your most serious and immediate attention, must furnish a sufficient apology for thus personally addressing your lordship." Now certainly the beginning of this letter does not show the least disposition to libel lord Ellenborough: but it may be said, that a man may begin with pretences and conclude with a libel. He goes on—"The two most valuable, and, perhaps, only remaining securities for the rights and liberties of Englishmen, are unquestionably the trial by jury and the freedom of the press; so long as the administration of justice continues pure and undefiled, and the wrongs and injuries of a suffering people experience full and adequate redress; so long as the public functionaries of our assemblies of legislature and courts of jurisprudence be open to free examination and inquiry; so long, my lord, and no longer, may the people of this country be justly considered as safe from the gigantic strides of despotism and the encroachments of arbitrary oppression."

Now, with respect to this part of the letter, the attorney-general has candidly admitted, that he finds nothing to complain of—he agrees in the doctrine, and so must every man—but then he would insinuate, that there is something of a different tendency intended to be conveyed, that although the writer had said, that as long as the public functionaries

of our assemblies of legislature, and courts of jurisprudence, continued open to free examination and inquiry, the people of this country might be considered safe from the gigantic strides of despotism, and the encroachments of arbitrary oppression; yet that he meant to infer something different. That is the intention imputed by the attorney-general; but I ask you whether, in discussing the writings of any person, it is fair for the attorney-general to say, that where the writer does not censure any one in particular, but confines himself to a general proposition, you are not to give him credit for what he asserts, but that you are to search for some insinuation, in order to make out that to be a libel which of itself is not so?—There is hardly an expression you can use, or a letter you can write; there is no praise or panegyric, but which, by torturing the meaning of it in the manner the attorney-general has recommended to you, you may turn into a libel. I am however convinced, that unless you find something direct, and intended, on the part of this writer, for the purpose of libelling the noble lord, you, will not be persuaded, by any arguments which the attorney-general has used, to consider that this publication has any such object.

It then goes on, and it seems to me that the writer is cautiously endeavouring to avoid every thing that can have the least appearance of a libel:—"Impressed with this salutary conviction, I feel it a positive right, as well as an imperious duty, to rouse the vigilant attention of my fellow-countrymen, to the late proceedings in their courts of justice; to call publicly upon your lordship for satisfactory explanation respecting a case that recently came under your cognizance, and was submitted to your jurisdiction; to examine freely, but respectfully, the force and validity of the observations that have been attributed, falsely I hope, to your lordship; and clearly demonstrate their evil tendency and pernicious consequences to the public at large." Now does this sentence, beginning with—"Impressed with this salutary conviction," display any thing of a libellous intention? Does the writer say that the blessings of the constitution are gone? that the administration of justice is destroyed? or does the passage authorise any of the insinuations which my learned friend has made, or the conclusions he has endeavoured to draw from it?—No—the writer is evidently impressed with the salutary conviction that we did enjoy those blessings: and so fully is he convinced of their continuing, that he argues with the lord-chief-justice the merits of the case to which he alludes; and, gentlemen, I put it to you, whether he or any person would have presumed to have discussed such a question with the lord-chief-justice, unless he had thought that the right so to do was open to him by the laws and constitution of his country, and that he could do it with im-

punity? I would ask you, whether in the time of the infamous judge Jeffries, a judge who would convict a man whether he was guilty or not, and who would hang a man for no other reason than because he did not like his name—I would ask you whether, if such a judge as judge Jeffries had been upon the bench, instead of the noble, learned, and upright judge, to whom this writer was addressing himself,—he or any man would have risked his life by entering into a discussion of what had been the conduct of the Court? His addressing himself at all to lord Ellenborough is a proof of the conviction in his own mind, that from his lordship's well-known liberality, and justice, he would have a fair hearing; and that, if he came into a court of justice over which his lordship presided, the just administration of the laws would be dealt out to him. I think that this is a much fairer conclusion than my learned friend, the attorney-general, wishes you to draw.

There is one expression which I wish particularly to observe upon: When the writer talks of the doctrines attributed to his lordship, he says (the instant he enters upon the discussion) he hopes they are attributed falsely; he is so far from attributing any thing improper to the conduct of the noble lord, that he sets out by saying, that he hopes those doctrines which have been attributed to his lordship may appear to have been falsely attributed to him, and that the assertion of their having been his lordship's doctrines, may turn out to have been the error of the editors of those papers in which he finds them.

He goes on—"It is essential, not only to the national safety, but to the security of every individual subject, that the man who is entrusted to preside over the tribunals of England, should be eminently distinguished for inflexible integrity and uncorrupted virtue—that he should rise superior to all selfish considerations or party views—and that the promulgation of his opinions from the judgment seat, should place his character in the most exalted point of view as the avowed enemy of corruption, and the friend of public justice." This is another paragraph which the attorney-general has perverted and twisted in the same manner that he had done the former, wishing you to take every sentence in a meaning the reverse of that which it obviously conveys, and desiring you to consider the very compliment which is paid to his lordship as meant for a libel. The observations which I made on a former part of this letter, where the attorney-general had perverted the meaning of the words, will equally apply to this sentence, and it is therefore unnecessary that I should trouble you any farther upon that point.

Then comes a paragraph, the whole of which the attorney-general did not read; but only alluded to it:—it is a paragraph wherein he says—"I had intended, my lord, that these

preliminary reflections should have been accompanied by a few remarks on the peculiar hardships and unprecedented circumstances attendant on the case of Mr. William Dickie, who is suffering all the aggravated horrors of a perpetual imprisonment, merely upon a civil action for debt !” Now his mere mentioning that circumstance, shows what were the workings of that man’s mind—it shows that he did feel—whether rightly or not is another question—it shows that he did feel warmly the circumstance of one person not having been sufficiently remunerated by the verdict of a jury, and the other having suffered too much. It does seem that he felt strongly the hardship of both cases, and that so feeling, he had sat down to pen this letter.

The concluding sentence of the paragraph shows that he neither had, nor could have had, any bad motive ; for he thus proceeds—“ But a desire to obtain complete information on the subject, and the present instance appearing to require more immediate attention, I shall suspend my observations, and confine myself to the case before me.” A libeller who would wish to bring into disrepute the character of lord Ellenborough, would not have been so careful to have obtained an accurate knowledge of the facts ; he would have told the story in the most inflammatory manner, if his object had been to write a libel—he forbears doing so, and the reason he gives is, that he wishes to have more correct information ; nor does he write again on the subject till a month afterwards, when he did possess, or thought he possessed, more complete information. Now this circumstance shows that he had no intention to do injustice to the character of the noble lord ; but that he merely wanted to discuss the question fairly, and to be of some advantage to Mr. Dickie, if he possibly could, by any remarks on the subject of his confinement which it was in his power to make.

This paper proceeds to state the case of Boyce and Bayliffe, as it appeared in the report of the proceedings in the Court of King’s-bench, published in the newspapers. Now, as the attorney-general stated the circumstances that took place, and did not read them as they appear here, I will read that part of the letter, in order that you may see that the attorney-general drew his conclusions from the trial itself, and not from what is here stated.—The writer says—“ My lord—A most shameful and wanton outrage on the personal freedom of an English subject has been committed by a brutal ruffian, and the complainant appeals to a British tribunal for indemnification and redress :—the case is completely proved, as well by the concurrent testimony of the most respectable witnesses in behalf of the plaintiff, as by the cross-examination of those on the part of the defendant.”

The attorney-general says that the case was not completely proved. What is his

meaning in saying so ? The attorney-general may be of opinion that it was not proved, but I may be of opinion that it was ;—for a case being said to be proved means only this—that the person who speaks of it concludes that it is proved ; and according to the difference of men’s minds, or the difference of their understandings, will they come to different conclusions, just as two different juries give different verdicts upon the same subject.

Mr. *Attorney General*.—I did not say that the case was not proved. On the contrary, I said that the plaintiff was entitled to a verdict.

Mr. *Clifford*.—“ The circumstances ” the writer then states, “ are shortly these :—The plaintiff, who had formerly resided in India, and filled an important situation in his majesty’s army, was returning to Europe as a passenger, in a vessel under the command of the defendant, with his daughter, a child of eight years of age ; and during the early part of the voyage had enjoyed, unmolested, the privilege of occupying the poop, and taking his recreation there with the superior officers and passengers. On a sudden, however, without any cause assigned, he is debarred from this enjoyment by the defendant, and compelled to retire with his daughter to another part of the vessel. The terms in which the prohibition is conveyed are of the most insulting and degrading nature : The defendant calls out to the mate to ‘ take that fellow from the quarter-deck, and never let him come there again.’—The plaintiff is accordingly ordered to quit the poop—he retires without any hesitation, and from that time confines himself in a more retired and private part of the vessel. Soon after, an alarm being given of some strange vessels in sight, which are mistaken for an enemy, the defendant calls over the names of all the passengers, orders them to their respective quarters, and commands the plaintiff to take his station at the poop. The latter refuses to obey this order, not choosing to return to the situation whence he had been so ignominiously driven—he at the same time professes his readiness to fulfil his duty in any other situation. The defendant immediately calls out, ‘ Here take this d——d rascal, and put him in irons !’ This brutal and ferocious order is instantly obeyed, and a British subject and a freeman is loaded with fetters, and exposed on the poop to the insulting derision of the crew, and the inclemency of a cold night.”

Now I will ask you, without going much into the detail of this case, whether such a treatment of a father in the presence of a daughter of the age of eight years, looking up to him for protection and support, was not likely to excite the feelings of any one ? but more particularly I will ask you whether a person, who was himself a parent, must not be supposed to have felt considerable indignation at the

mere recital of these facts? and if, under the workings of such a virtuous indignation, he had been induced to have gone much further than this writer has gone, I would ask you whether you ought not to make allowances for the feelings of a father, and say, that though he has transgressed the bounds of decorum, yet on account of the honourable feelings and sympathies of human nature, we will look over the warmth of his expressions, though they may not have been altogether justifiable?

What is the next paragraph, on which such a curious comment has been made by the attorney-general?—"For this outrage and for indemnification for the expense of his removal from a vessel where he could no longer with safety or prudence continue, he returns to England in another, and seeks for reparation in a British court of justice! The British public, my lord, will be amazed to learn, that after a recital of this atrocious offence, and a full and complete proof of the truth of the accusation, that, under the direction and upon hearing the concluding remarks of the lord chief justice of England, an English jury, feeling no doubt for the wounded honour and insulted rights of an injured fellow-countryman, awarded damages to the extraordinary amount of (I blush to name them) eighty pounds!!!" Now, gentlemen, can any body read that paragraph without saying that the man who wrote it was at the time completely impressed with the subject to which it relates: that it occupied his entire soul, and that so far from any thought coming across his imagination that he was libelling either the judge or the jury, he did not, on the contrary, conceive he was doing more than merely setting forth the workings of his mind, feeling deeply, as he unquestionably did, for the injury done to the father of this young girl?—but there is a curious history with respect to this paragraph—the attorney-general says, that it is a paragraph which he heard repeated by the most eloquent man in this kingdom. We have not heard who that most eloquent man in the kingdom is, but we may guess, and I would ask you, is that man whose eloquence is only equalled by his understanding and good sense, likely to be getting by heart libels? Is it likely he would have learnt this passage by heart if he thought that there was any thing in it in the smallest degree offensive to the laws of the country? Is it not rather likely that he saw and felt all the hardship which belonged to the case of Mr. Boyce; and that he thought the jury should have given different damages—that he thought they ought to have returned a verdict to a larger amount? Can it be imputed to any other cause than what I have stated, that this eloquent person got this eloquent passage by heart? Now that I should conceive to be the fair conclusion to be drawn from this passage having been repeated by the eloquent person alluded to, who, from what we know of his character,

never could have delighted in learning by heart gross libels.

The letter then goes on—"The public must certainly be at a loss, my lord, to account for the excessive lenity of this singular verdict, especially when they contrast it with the case of Dickie; where, merely for words spoken at a common alehouse over his cups, and possibly not quite in his sober senses, a verdict was given for 700*l.* and the unhappy culprit in consequence of his inability to pay the penalty of his offence, and even in spite of the forbearance of the aggrieved party, is doomed to end his days in a gaol." With respect to the case of Mr. Dickie I shall say nothing at present, for there is another letter, and I shall defer what I have to say on Mr. Dickie's case till after I have commented upon that. The writer adds,—“But our surprise will be materially diminished and our apprehensions increased, when we peruse your concluding observations. We are told in the printed statement of this remarkable trial—” You see gentlemen, that he is still referring to the statement which he had seen in the newspapers,—“We are told in the printed statement of this remarkable trial, that your lordship was pleased to observe, that in this case neither party had been entirely free from blame! and we are naturally led to inquire of your lordship what part of the plaintiff's conduct was deserving of reprehension—you acknowledge that he had been rudely driven from the poop, and without any assignable cause or alleged misconduct, deprived of his usual comforts of exercise and recreation! You assert that the defendant had the strict right of withdrawing his indulgence, if he thought proper; while you, at the same time, deny the exercise of a similar right to the plaintiff to withhold his assistance from a wretch who had publicly treated him with gross indignity and contempt, in a case too of extreme personal danger, where he was bound by no moral sympathy or legal obligation.”

Now upon this part of the case (whether the writer came to a fair conclusion or not) I ask you this question:—Is it not clear that he meant to argue the point he was referring to fairly and candidly? Does it not show you that instead of coming forward, and at once stating an opinion of the lord-chief-justice, unfavourable to his general character, or his conduct in the particular instance, he wished to enter into a detail of the subject—to examine it under all its bearings and points of view, and then to urge the conclusions which he thought ought to be drawn. Here let me call in aid what was said by the attorney-general to the jury in a late trial,* namely, that if they thought the subject was one of fair discussion, and was fairly discussed, they ought to acquit the defendant—

* See the preceding case.

but he said that the contrary appeared in the case I am alluding to. He stated, that there were two letters written, in one of which the writer said he should in a future letter bring forward his arguments in support of what he had advanced; but that this was merely a blind, for that he had not brought forward any arguments, neither had he written any subsequent letter. I am sure that I may expect it from the candour of the attorney-general, that he will not blow hot and cold with the same breath. He will not tell you this day, that because there were, as he conceived, no arguments used in the former publication, and the jury were in that case bound to convict the defendants, that therefore you should convict them in this case, where there are arguments and fair discussion. He stated that the defendants were, with respect to the former publication, guilty, because there were no arguments—no fair discussion—on the contrary, nothing but assertion and loose declamation. If so, then upon his own mode of reasoning, these defendants for whom I am pleading must be innocent; because in this case the writer fairly states the question—fairly argues upon it, and fairly draws such conclusions as to his understanding appear to be right. Now, gentlemen, if you do find that such is the case, and that the writer has fairly argued (whether erroneously or not is out of the question), you will hardly, I think, on account of some improper and unguarded expressions, say that he is guilty of a libel.

The writer then proceeds—"Good God, my lord! is that delicacy of sentiment—that acuteness of feeling—that nice sense of honour—that decent pride which preserves men honest amidst the raging temptations of surrounding vice and folly, and nourishes in their bosoms the noble principles of freedom and independence—Is this, the safeguard, and often the substitute of all other virtues, which resents an open insult as a serious injury, and learns to practise the useful lessons of forbearance out of respect for the rights of others, to be thus misrepresented, undervalued, and despised?" The only observation I make upon this passage is, that if there is any impropriety in the mode, manner, and style of expression, the fault is to be attributed only to the warmth of the writer's imagination. If you find, as I am sure you must, that it arises out of the subject itself, and from the feelings of the moment, it will be difficult for you to torture the expressions into any thing like disrespect towards the noble lord, or to construe them in a way which will warrant your verdict of conviction against the defendants:—you will rather, I am persuaded, consider the expressions as naturally arising out of such a subject, contemplated by a writer whose feelings were deeply interested by the circumstances to which his letter related.

The writer goes on, "Upon what principle,

my lord, either of law or justice, was this injured gentleman bound to expose his life and hazard the ruin of his helpless daughter, who could look to her parent alone for protection and support? Was he enrolled or registered as one of the crew? Did he receive the wages of a soldier or a seaman, or had he any share or concern in the property or merchandize of this vessel?—None. He was a private passenger, coming peaceably over to England for the laudable purpose of educating his only daughter, and claimed the common rights of hospitality and decorum! My lord, the details of this trial have filled me with horror and indignation!"—Now, I think that the attorney-general was more eloquent in that part of his speech which related to this passage, than he was in any other. He hoped that such were not the feelings of the people of this country. He hoped that it was not requisite that men should either be forced or paid to defend the country. He hoped that the great mass of the people would be volunteers in the hour of danger for the support of their sovereign, and the laws and constitution under which they happily lived. Whether it was the duty of Mr. Boyce to come forward and defend this ship is a matter with which you have nothing to do. It does appear that it was the opinion of this writer that his having been ignominiously (as he conceived) sent away from the poop, justified him in not defending that part of the ship. He asks what duty required Mr. Boyce to go from the poop, and why the lord-chief-justice should have felt so much for the captain and so little for Mr. Boyce—he asks whether or not Mr. Boyce was bound to obey him. The person who writes this letter was of a different opinion from the lord-chief-justice, and he has discussed and given his reasons for his opinion.

Then comes a paragraph of which the attorney-general has spoken in terms of severe reprehension, and on which I shall think it my duty to make some observations: "Be assured that the public mind is steadily fixed on the character and conduct of the present lord-chief-justice of England, and regards them with an eye of suspicion and alarm." Now, I will ask you where is the harm of saying that the public mind is steadily fixed on the character and conduct of the lord-chief-justice? Where is the harm of it?—I should be sorry indeed, ever to see the day when the public eye was not steadily fixed, not only on the lord-chief-justice of England, but on every officer under the crown. The first principle of the British constitution is, *jealousy of men in power*;—the first principle of the British House of Commons is, *jealousy of the Crown itself*; and, in fact, no privilege of our constitution can be more beneficially applied than the principle of suspicion of all persons who have power, for we know too well that it is the nature of men to abuse power when they possess it, and that, at all times, the powers of the officers of govern-

ment have been in danger of being increased, and might have been increased to the injury of the constitution, unless the public eye had strictly watched them.

Then he states, that the public regards him with an eye of suspicion and alarm.—What is there here of suspicion, of the lord-chief-justice, more than of any other person?—But, says the attorney-general, the writer says, in another part of his letter, that the conduct of the lord-chief-justice puts him in mind of the times of James the second, and in the time of James the second lived judge Jeffries, and judge Jeffries was seized by the populace for the crimes he had committed, and died of the wounds they inflicted upon him. I believe that was not the case. I believe he died of the fear of that public execution which his crimes had merited.—What is the subject of alarm that has been occasioned by the conduct of lord Ellenborough?—The writer tells you what it is. He refers you to the case of Boyce and Bayliffe; and after considering that case, he says, that the lord-chief-justice having so conducted himself, we are called upon to view with suspicion and alarm the conduct of the lord-chief-justice; and then he writes this letter to lord Ellenborough, in order that, if he has been erroneous in his judgment upon that case, he might correct his error.

Now what was the conduct of judge Jeffries, whose name, my learned friend says, this writer brought up, in order to institute a comparison between him and the noble lord?—Judge Jeffries had, in the west, murdered persons under the forms of law, and indeed without any forms of law whatever, according as his caprice prevailed—whether there was any thing proved or not against the party, he sent him to immediate execution!—Does he mean to say there is any thing in these letters which insinuates that such had been the conduct of lord Ellenborough?—All that this writer says of lord Ellenborough is, that he recommended small damages when the case required larger; and that, by introducing the clause into the act of parliament, which clause applied to the case of Mr. Dickie and prevented his being liberated, he thought he was inclined not to show so much lenity as he ought to have shown towards British subjects. The grounds of alarm could only have been such as are stated in the papers themselves, and the construction put upon them by the attorney-general is, therefore, not the fair construction.

There is one paragraph which I am surprised the attorney-general did not read. He gave you the meaning of the passage, but he did not read it. The writer says, “the increasing frequency of duels in this country can excite no surprise, when we reflect that an opinion appears to be rapidly gaining ground (an opinion which, I trust, is ill-founded), that private injuries have of late been seldom compensated by public repara-

tion; that the sufferings and grievances of individuals have become subjects of banter and ridicule; that the characters of witnesses have been assailed, and their testimony confused and perverted, by the gross calumnies and vulgar witticisms of babbling pleaders and pettifogging attorneys—and that men, therefore, rather choose to become the arbiters and judges of their own causes and quarrels, than seek, in vain, for a tardy and ineffectual redress from a public court of justice.” He then promises another letter.

Now let me ask you, is it not true, whatever may be the cause, that of late years we have seen private duels increased in an extraordinary degree. I am afraid such is the fact; I am also afraid that it is a fact, that persons do complain of the manner in which they are treated in courts of justice, at least I have had the misfortune to hear such complaints. I have heard it said, that witnesses were often brow-beat by counsel; that they are frequently so confused, that they tell a different story from what they meant to tell. Is it not a complaint that one frequently hears, that justice is not administered, because, owing to the brow-beating of the witnesses by the counsel, the real facts do not appear?—that such a complaint, whether well or ill-founded, has been expressed we must know, for we have often heard it: then if he thinks that owing to this and to juries not giving sufficient damages, and persons not obtaining adequate reparation in courts of justice, has arisen the frequent practice of duelling, surely these are grounds to show, that the writer was not actuated by any improper motive; but that these were fair subjects of discussion, upon which it was proper for him to address the lord-chief-justice. Surely when the lord-chief-justice has summed up the evidence in a cause, and told the jury that they ought not to give considerable damages, it is fair for this writer to differ from the lord-chief-justice as to the proper proportion of damages. And if he does differ from him, it is fair for him to state the reasons and grounds of his so differing from him; to state the evil consequences of that doctrine by which the jury were induced to give inadequate damages; to warn the public upon the subject, to call their attention to it, to urge them to watch the conduct of the lord-chief-justice, and to enable the lord-chief-justice himself, if he was wrong, to correct the errors of his doctrines. I am sure my learned friend will not contend that it is libellous to say, that a lord-chief-justice may err; he will not say, that it is libellous to find fault with the doctrines of the lord-chief-justice, or to assert that he has been guilty of error.

Gentlemen, the next letter is that upon which the attorney-general principally dwells; it is signed—“A SEAMAN;” and it seems by the note referring to it, to have come to the paper a week before, and not to have

been at first inserted. The letter begins—
 “I have read a report of a trial in the Morning Post and Morning Chronicle of this date, before lord-chief-justice Ellenborough; and if that report be correct, it is full time that the doctrines and decisions of that personage should be carefully attended to, with a view to their being candidly examined and discussed out of a court of justice, where it may not be very prudent to enter into a controversy with his lordship.”

So far there is nothing libellous in this; he professes his anxious wish to enter upon a candid discussion of the subject, and surely no one will venture to contend, that it is not lawful to enter upon a candid discussion of what passes in a court of justice. Now let us see what follows:—“He has upon several occasions announced a bias so very strong towards arbitrary power, that I have been led to suppose that it was in the latter end of the reign of James the second, and not of George the third (the father of his people) that I was living. Impunity gives boldness; and it is perhaps owing to the silence of the public on the animadversions and addresses of our judges to the jury, of late years, that the promulgation of principles subversive of our rights, has been carried to a very censurable extent.” This passage, connected with the paragraph at the conclusion of the last letter, seems to me to be the principal ground upon which the attorney-general thinks he can secure your verdict. It will, therefore, be necessary for me to examine more at large, and to discuss fully the proposition here laid down.

Gentlemen, to take this latter part first, which says—“that impunity gives boldness. and it is, perhaps, owing to the silence of the public on the animadversions and addresses of our judges to the jury, of late years, that the promulgation of principles, subversive of our rights, has been carried to a very censurable extent.” Now I do not mean any disrespect to any of the judges, but I cannot help saying, that I hope there is no libel in this, for I perfectly agree with the sentiment of the writer. Have not all the evils of which we complain, all the strange doctrines that have been introduced into the law, upon the subject of libels, arisen from the silence of the public, in not animadverting upon the addresses of judges to juries? I beg to recall to your minds what I stated to you in the outset, of the law of libels. At the time the doctrines to which I allude were broached, before the Revolution, it was neither wise nor safe to comment on the conduct of judges; no person was safe who did so; the consequence was that the infamous judges of those times went on, step by step, till they had destroyed the liberty of the press; and when the Revolution came, which restored the liberty of the press, yet it left the judges hampered by the decisions of those who had gone before them, and even chief justice

Holt was so hampered by these decisions, which it was the object of Mr. Fox's bill to destroy, that he found himself obliged to follow the footsteps of his predecessors. Now I will ask whether, if there had been a free press, if writers had been allowed to make their comments on the addresses of judges to juries—I ask you whether a stop would not have been put to the career of those judges; whether those judges, who first destroyed the liberty of the press, would not have been afraid to have continued their criminal career; and whether the judges who succeeded them would not have given the subjects of this country the benefit of the same mode of trial in the case of a libel, which the revolution had secured to the people in all other cases?

I therefore agree with the sentiment here delivered, and I contend, that all the doctrines of which we complain—doctrines which even our most constitutional judges, after the Revolution, could not do away—were owing to the silence of the press; I contend, that it was for the want of free animadversion and discussion on the conduct of judges, that those doctrines rose to such a height as they did, and that if persons had not been restrained by fear from commenting upon the conduct of judges, such doctrines would never have been adopted. But the attorney-general may make another remark; he may say, it would have been as well if the observation on judge Jeffries, Scroggs, and the judges of that time, had been confined to them: he may say, how can they apply to the present judges? He will ask you this question,—do you feel any danger to your liberties from the doctrines of the present judges? He will ask you whether they have not uniformly shown, that they are as much in favour of the just rights of the people who come before them, as of the prerogatives of the crown? I agree with him; but, therefore, I say that there is the more ground for alarm, because, any precedent made by a judge, who we know is actuated by an honorable motive, sinks deep into the mind of every man. It is an argument in favour of the precedent, though it should be a bad one, that it cannot be supposed such a judge would sanction a precedent that was founded either on error or injustice. It would be said of a judge of such inflexible integrity as the noble lord, that he would not have established such a precedent, if it had not been well-founded.

Gentlemen, if you go into the investigation of this subject, you will find that some of the most obnoxious doctrines began in the times of some of our best judges—you will find that they so began, and by slow degrees were established and became the law of the land; therefore, the wisest thing to be done is to watch with a scrupulous eye the conduct of even the best judges. In fact, the better the judge is, the more necessary to watch him; because a precedent from such a judge

becomes of more consequence in its operation and effects. The precedent that emanates from a bad judge is disregarded—any precedent would be cast aside that had been made by such a judge as Jeffries: therefore, in my mind, not to be sensible to the danger of the precedent of a good judge, is the shoal on which you split—for when you see a precedent made by a judge whom you know to be a friend to the public, and a rigid supporter of the laws and constitution of the country, you take it for granted that even his error is right; that that which he did must have been done to promote the good of the subject—while it is considered that the precedent of a bad judge comes so warped and twisted the other way, that it must have a tendency to the destruction of our liberties:—in justification of the error, you quote the character of the judge who introduced it. Now this can never be the case, where the conduct of a judge is the subject of free discussion.

The other part of this letter is that which states that lord Ellenborough has announced a bias to arbitrary power; and that passage too is connected by the attorney-general with a passage in the other letter. Now, gentlemen, a bias to arbitrary power may, or may not be a crime in a judge. I do not know that to say of a judge, that he has a bias to arbitrary power, is to vilify and degrade that judge, or to bring the administration of justice into hatred and contempt.—I remember the observation of one of the most eloquent men that ever lived, upon this subject—I mean the late Mr. Burke: when asked why he, who had been such a bawler for the rights and liberties of the people—how he, who had been such a supporter of the democratic part of the constitution—how he, who had talked of hurling kings from their thrones—how he, all on a sudden, could so completely change his mind as to be as violent in support of arbitrary power, as ever he had been in support of liberty? The answer he gave was, that the times were changed—that his object was to keep the constitution perfect in all its branches; and as a mother, when she saw one of her children in danger, would leave the others to save it, so when he saw one of the branches of the constitution in danger, he would withdraw his protection from the other branches, in order to prevent the branch which was in danger from being destroyed—that, finding in his younger days, that the danger to the constitution of this country was, from the too great increase of the prerogative of the crown, he had supported the cause of democracy; but that now finding, by the prevalence of those principles which had been introduced by the French revolution, that the prerogative of the crown was in danger, he clung to the monarchical part of the constitution, in order to take care that, in the exuberance of liberty, the monarchy did not suffer; and that when he had brought people over from their false and enthusiastic notions

of liberty—and when the deranged and mad state of things had become composed and found their level, and the constitution had assumed its just balance, then he should cease to support the cause of what might seem arbitrary power.

I think upon this subject with that eloquent statesman, that where there is a run of the prerogative against the people—that where undue arts are used to procure verdicts against defendants, men are justified in clinging to the cause of the people against the prerogative; but when, on the contrary, the prerogative is in danger, and there is a necessity of keeping down the mad notions of the people in favour of that kind of liberty which is dangerous and unconstitutional—in such a case, I say, that to assert the inclination of a judge to arbitrary power, is so far from being a libel upon him, that it is, perhaps, giving him the greatest praise, which, under such circumstances, could be bestowed upon him.—But farther, if it be a libel on a person to say that he has a bias to arbitrary power, I am very much afraid it is a libel upon us all; for we are so made, that in every situation of life we cannot look into ourselves, without finding that we have within us the seeds of arbitrary power to a very considerable extent, though it is only according to the means we have of exercising it, that we can show the degree in which we possess it.

If this passage is a libel, the writer must have taken it from the works of one of the ablest persons who ever wrote. About the time of the trial of Woodfall, there was much difference of opinion as to the conduct of lord Mansfield on his summing-up to the jury, and on his delivering the opinion of the Court in Westminster-hall; and that difference of opinion gave rise to very many publications on the subject.—There was one publication of very great celebrity, both as to the matter of it, and the person who was the author: the title of it was, "Letters to Mr. Almon on the subject of Libel; written by the Father of Candor." It may be worth while to show you who was the author of these letters; and when you find that lord Mansfield is spoken of in the identical words in which lord Ellenborough is spoken of in this publication, I am sure you will not think that the writer was disposed to libel the judge.—The letters were written by Mr. Greaves, a master in chancery;—they were not immediately ushered to the world, when they came from his pen—they were written at the desire of lord Camden and Mr. Dunning; and before they went to the world, they were corrected, revised, perused, and settled with their approbation. Now I am sure that letters coming forth with the authority of such persons, you will be convinced could not have been published with any libellous intention—and I do ask you, that if you think a person of the description of the author of the Letters to Mr. Almon could publish them with an honest motive,

you will not, because the author of this publication, which is before you, had not so much talent as the learned gentleman and the noble lord who wrote the letters to Mr. Almon, take it for granted that he had a bad motive.

The passage is not very long, and I will state it to you—"Is it not moreover possible that judges may so execute their offices as to raise just apprehensions of their turning the law to the oppression of the subject, especially in crown prosecutions? and that their ways of compassing this may afford justifiable grounds for animadversion, and for the controverting of the constitutionalness of their adjudications? The remarks of sir John Hawles upon several state trials prior to the Revolution were thought to be most material and just—they were of great service at that period, have since been constantly printed in the collection of state trials, and though very severe, are not deemed any abuse of the liberty of the press, but a true use of it." Here, canvassing the doctrine laid down by lord Mansfield, these noble and learned persons remark, that judges may so misbehave themselves, as to raise just apprehensions of their turning the law to the oppression of the subject; and that the laws may be so wrested and perverted by judges, as to render it very fitting that the conduct of the judges should be the subject of animadversion. Supposing this had been the libel of to-day, what would have been the language of the attorney-general?—He would have said that it meant to insinuate that such was the conduct of the lord-chief-justice. I have no doubt that the persons who wrote these letters did think that the conduct of lord Mansfield ought to be watched; but they never thought they were degrading that noble lord, or bringing the administration of the laws into contempt, by the exercise of that constitutional right, which they unquestionably considered they were exercising.

He refers you to the remarks of sir John Hawles, in the state trials, which were published after the Revolution: he says, that though they were severe, they were always thought of great service. What were they?—Sir John Hawles, in queen Anne's reign and king William's reign, was solicitor-general. Will it therefore be said, that because he was solicitor-general, that it was no libel in him to write what he has written, but that if any other person presumes to write the same matter, it shall be a libel in him, because he has not the rank and dignity of the attorney or solicitor-general? Gentlemen, the remarks of sir John Hawles on the cases of Coningsmark and Fitzharris are in the state trials*: he does not merely call it a job, but an iniquitous one. There was also the case of the King against Colledge,† who had been indicted for

treason, in writing a libel upon a judge—that indictment was bad. They had also tried Fitzharris, who had been found guilty and executed. They had indicted Coningsmark; and the grand jury, probably thinking the punishment was too great for the offence, threw out the bill against Colledge; they went to Oxford, and there got the indictment found behind his back. In that state of things, the attorney-general took possession of his papers, kept all those that were in his favour and made for him, and gave him back those that were against him. He applied for liberty to have a counsel, which was refused him. Upon which sir John Hawles said, that the reason he was refused was, that chief-justice North said he was his counsel himself,—upon which sir John Hawles made this remark—"that the counsel had deserted the cause of his poor client, the prisoner, in order to serve the cause of his rich client, the king:" he gives us to understand that the prisoner was tried on a false indictment—that the offence did not amount to treason; and he says, that the judge's summing-up to the jury was such as to induce a belief that he had accepted a bribe.*

I have only mentioned part of the letters to which lord Camden gives his sanction. It cannot be said that these judges were dead, and therefore might be spoken of with freedom; for strange would be the situation of the people, if only when the mischief has been done, you may then hold it forth to the public; but you may not call forth men's attention, you may not give the alarm while you think the mischief is going on. You must not do any thing to stop the evil, but you must wait, and suffer all the injurious effects of it. You must feel the consequence of all the inconveniences produced by it, and then, and not till then, you have a right to complain. This is not law—it cannot be law, for it is not sense, and you will not sanction it.

The authors of the letter to Mr. Almon having stated the doctrine that judges might so exercise their offices as to turn the law to oppression, proceed in this manner:—"Where what I do does not in fact interrupt or disturb the proceedings of a court, I will deny the legality of its power to attack me. No judge has a right by that term to shut my mouth, or to prevent my pen from censuring what I think erroneous in his distribution of public justice." Now I ask you, can you in this alleged libel find any motive other than a wish to censure what appeared to the writer (whether erroneously or not, does not signify) to be wrong in the distribution of public justice?—If the whole of the matter points to that end and object, you are not to condemn it on account of the warmth of particular expressions which you may find here and there. I have the authority of my learned friend, the attorney-general, for saying

* 8 How. St. Tr. 425. 9 How. St. Tr. 125.

† 8 How. St. Tr. 549.

* 8 How. St. Tr. 723.

that it is the right of every Englishman, and that it may be of essential service to the country to canvass the proceedings of courts of justice, provided it is done in a fair, decent, and respectful manner. Now, I dare say that the attorney-general might take this letter, addressed to Mr. Almon, and might turn it into such a censure of the judge to whom it relates, that a jury might be called upon to consider it as libellous.

The letter to Mr. Almon then proceeds:—"At the same time no man reverences the present set of judges more than myself, sincerely believing that few periods of time have produced men of more science upon the Bench, of more integrity or understanding, insomuch that it would be difficult to make a change for the better, unless you could pick out another Yates from the bar." The attorney-general might make out that to be a libel, if he were to comment upon it in the way he has done with respect to the publication attributed to the defendants; for there certainly was a great difference between the characters of lord Mansfield and of Mr. Justice Yates.* The attorney-general might say that the passage was meant to hold forth the one as an object of approbation and admiration, and the other as an object of contempt. He might say, that though it appeared to be a compliment, yet underhandedly, it was meant as a censure. Gentlemen, the letter I am stating to you, goes on to say—"I honor their offices as the most beneficial to a free state, and therefore think they should be, if they are not, rendered worthy the acceptance of the first men of the profession. Nevertheless, I will never subscribe to the putting them above the inspection of their country." Is not this just the language of the letter contained in the present information, and which is made the subject of a charge of libel?—I repeat it to you, that unless the attorney-general lays down precise rules as to what shall be deemed libellous and what shall not, where is the man in his senses who will step forward and venture to make any comments upon the proceedings of courts of justice?—In my opinion, if you were to find the defendants guilty, the effect of such a verdict would be to put the judges completely above the power of the people of this country, to call them to any account for even the most flagrant acts of injustice.

The letter goes on:—"Power and authority, without check, may induce men of honor to be more arbitrary than they should be; and I can easily imagine that very extraordinary men may be possessed of prerogative and aristocratical notions, which may be extremely pernicious to such a common-wealth as ours. If they can introduce and establish for law

* *Vide* 2 Woodfall's Junius, 165, note; and the Debate in the House of Commons on the Administration of Criminal Justice, 16 New Parl. Hist. 1211.

their own ways of thinking, by solemn judgments from the bench, the most dangerous *dicta* may, when secure from the revision of the public, become, by time, respectable and venerable, and be hereafter alleged as precedents and the real established law of the realm." Now I do not think it is possible to find any writing more constitutional than this which I have stated to you. I am sure, that although I have mentioned to you the names of the persons who ushered this publication into the world, the strong sound sense of every man who values the rights of his fellow subjects and the constitutional privileges of his country, would even, without the mention of those authorities, convince him of the truth of the doctrines it contains, and that the bare statement of those doctrines, would of themselves produce their due effect upon his mind.

Now I beg leave to observe, that all that is stated here, is in a letter commenting on the conduct of lord Mansfield and the other judges in the Court of King's-Bench:—there is no doubt about that: when the writer says that extraordinary persons may have aristocratical notions, there can be no doubt that lord Mansfield was the person alluded to. He was accused of it in parliament and in the Court of King's-Bench; and there was not a newspaper of the day that did not attribute such sentiments and doctrines to him. Nay, so generally did this opinion of him prevail, that Junius begins his letter to him, by saying that his lordship had originally been a friend to the Pretender, and that he had shown his gratitude to him, by quoting, on every occasion, the authority of Justinian in the court over which he presided; and by uniformly endeavouring to introduce the principles and practice of the civil law, instead of the common law. That was the constant language of the day, and therefore it cannot be doubted that this letter was meant to allude to the conduct and decisions of lord Mansfield.

You observe how the letter is couched. It does not immediately attack the character of lord Mansfield; but the writer says that persons of extraordinary mind may be led away by their particular notions; and we know that no man can help his notions, be they what they may—and he, therefore, in order to prevent the improper notions and doctrines of a judge being carried into effect, and becoming precedents, wishes to keep them in check by the operation of a free press, and that their doctrines and decisions may be the subject of free and impartial examination—that, however they may flatter themselves with impunity, they shall not escape by having told the public they may not fairly discuss what passes in a court of justice.

The publication, signed "A Seaman," which is the subject of this prosecution, proceeds to argue on the case to which it was referring. I need not read the argument to you at length.

You will recollect that it compares an East-India captain to "one of the *trechtschuyts* on the canals in Holland and Flanders, the skippers of which furnish meat and drink at stated, not arbitrary prices, to their respective passengers. The Dutchmen do not give any goodwill for the command entrusted to them; but the skippers of our English passage vessels to and from India, give from 8 to 10,000*l.* some say 12,000*l.* good-will—of course this enormous sum, and no doubt with enormous interest, must be reimbursed to them—and how is it reimbursed?—by carrying like stage-coaches, parcels and passengers, by fair trade, and by smuggling," and then the conclusion he draws is, that this person not having been treated with civility, but on the contrary, with great cruelty and oppression, was therefore entitled to large damages, and that the Court did not award them to him.

Then he goes on to say—that "lord Ellenborough seems to think very lightly of an Englishman being confined several hours in irons by the impudent mandate of a man hired to behave civil to the person whom he insults and degrades." I really do not know (and it has very little relation to this case) whether lord Ellenborough does, or does not think lightly of an Englishman's being confined in irons; but this I know, that it is evident the attorney-general does think lightly of an Englishman's being put in irons, for, in the course of his speech, he says that this gentleman was put in irons all night, *but he was subjected to no particular inconvenience!** Now I should be glad to know what greater inconvenience an Englishman, or a man of any country can be subjected to, than when he is on board a vessel, for his passage in which he has paid a large sum of money, and has got his daughter with him, a tender female of the age of eight years, that she should see her parent so ignominiously treated; that instead of his being in the cabin with her, where he ought to have been affording her his protection, she should see him kept all night in irons like a common felon! I ask you, gentlemen, whether the bare statement of such a circumstance as this was not more than sufficient to rouse the indignation of a man feeling infinitely less warmly upon the subject than this writer appears to have felt?

Now, gentlemen, to address a few words to you with respect to the expression which the attorney-general has so much dwelt upon: the writer says—"Lord Ellenborough feels nothing for the wounded sensibility of a female, the daughter of the injured party—I suppose his lordship is not a father—I should almost question his ever having been a son, if there had been any other mode of his coming into existence." I do not stand here to defend such an expression; it is certainly a very flippant expression; but when I have said that, I have

said all that applies to it;—for one expression of this kind you are not to convict the writer of an intention to vilify and bring into contempt the administration of the laws. Let us strip the publication of this sentence—it would then stand merely that the author has described his conceptions of the feeling of the father and the daughter: and then it must appear to you, that the expression amounts merely to this, that lord Ellenborough, by the manner in which he summed-up the evidence, did not evince that sensibility and feeling which the writer thought he had a right to have expected from him.

Now turn that sentence about the father and the son into common language, and it will amount to nothing more than a flippant mode of treating the subject—an hasty expression, perhaps meaning nothing—at least you can make no other sense of it than that it meant to convey, that lord Ellenborough had not shown that sensibility which might have been expected from a person of his lordship's well-known character and disposition. Now that is the head and front of our offending, and you cannot from that expression, arising from what went before, and from the writer feeling in the way he did, and having drawn his conclusion that a person so summing-up to the jury did not show a sufficient degree of sensibility—I say you cannot, from that expression, convict the defendant of a design to bring the administration of the laws of his country into contempt. I do not say that the conclusion the writer has drawn is my conclusion. I am far from saying so.

The writer then goes on with arguing the case. He says, "If the passenger had behaved ill, which does not appear, I doubt whether the captain could legally forbid him to walk in any open, or public part of the vessel; and his doing this was an affront which would have authorized the offended person to have chastised him the first opportunity he met him on shore." This is the expression which excited the indignation of the attorney-general—he asked, where the law could be found for such a conduct as this writer says the offended party would have been authorized in adopting? I answer, that there is no such law—I do not say that he would have been authorized by law—but I do say, that by the rules of honour, as they are generally understood and acted upon, he would have been justified, after the treatment he had received, if upon meeting the captain on shore, he had caned him. Now that is the whole meaning of the sentence—I defy you to give it any other meaning—the idea of the writer with respect to the affront and indignity offered to this gentleman, is the reason why he conceives the jury ought to have given heavy damages. Then he says that, after such an affront as this, "to order him to the spot whence he had excluded him, was insolent and tyrannical, and it much grieves me to find a conduct so flagitious, even palliated by the lord-chief-justice of England."

* *Vide p. 1228, and the Attorney-General's Reply infra.*

These are the only letters that relate to the conduct of lord Ellenborough as lord chief justice. The other letter is addressed to lord Ellenborough as a peer of parliament; and though the attorney-general may say that the one illustrates the other, yet I think you are bound to make a distinction between them. It seems to me, that the fair way of considering this letter is, to consider what was the object of the person writing it, and I am pretty confident that when you come to read it over, you will not be able to forbear coming to this conclusion, that the writer had his feelings much excited by what had been done with regard to the person to whom it relates, and that his object was to explain his reasons for the feelings by which he was actuated, and to endeavour to excite his lordship's compassion, by showing what had been the effect of his conduct in the particular instance; that his lordship might be induced to correct upon some future occasion the error which he supposed him to have committed with respect to the case of Mr. Dickie. I think that was evidently his motive; and when you see the trouble he takes, and the anxiety he feels, in order to give effect to those feelings which urged him to address the noble lord, I think that, for one or two expressions, you will hardly consign him over to a severe punishment, when the general scope and tendency of the letter will not warrant it.

I shall now state to you the letter which relates to the case of Mr. Dickie. It is subscribed as the first had been with the signature of Junius. The letter thus begins—"My lord;—The letter which I lately addressed to your lordship, was upon a subject deeply interesting to the feelings of every individual, and important to the community at large. I have reason to believe that it was not deemed unworthy of your attention, and that the principles which it endeavoured to inculcate, have not been disregarded or despised."—It does not look much like the course and conduct of a libeller, that having written one letter in which he promises another, he should come again to the discussion of the subject, and introduce it with a preface or exordium evidently showing that he was not conscious his former letter had given any offence.

It does seem to me most evidently to have been his object and intention to convey by this letter the idea that he was not disposed to libel the lord chief justice, and was so far from imagining he had libelled him in the former letter, that he considered the arguments he had urged had produced some effect on the mind of his lordship. He gives a short account or history of the cause between Mr. Aris and Mr. Dickie; and after stating something about Mr. Aris, which it is unnecessary for me to repeat, he goes on to say, "But your lordship will, I trust, excuse me for expatiating a little on the peculiar novelty and

hardship of the defendant's situation, and on the extra-judicial proceedings which have distinguished the present case. Permit me to detain your lordship with a few preliminary observations on what I conceive to be the law of England, as applicable to the law of libels, and what appears to me to be the just rights and constitutional privileges of every British subject. I am not versed in the intricate subtleties of legal reasoning, nor the abstruse and technical terms of the profession; should I therefore prove incorrect in my statement, or erroneous in my conclusion, your lordship will scarcely impute to me either sinister or illegal motives, but freely acquit me of any intention to misrepresent or mislead."—Here, gentlemen, you see that at the very outset he states his deficiency of legal learning, he lays in his claim not to be misrepresented, and he states that he does not wish either to mislead the public, or offend his lordship.

He then proceeds to state what he considers to be the law, and he takes a distinction between criminal and civil prosecutions; you may remember that the attorney-general said he was wrong in the law he laid down, when he stated that a plaintiff was entitled to damages only where there was a particular injury. Now, gentlemen, if a man brings an action and states special damages, unless he proves special damages, the mere libel upon his character will not authorise the jury to give him damages; therefore, you see that the error into which this writer has fallen, and which the attorney-general imputes to him, is merely that he is mistaken with regard to the effect of a common declaration for a libel, and a declaration charging special damages; but, whether what he states was law or not, if he conceived it to be law, and argued upon it as such, it is sufficient to exculpate him from any bad intention, and to show that he could not mean to libel lord Ellenborough. He clears his way by stating what he conceives to be the principles of the law, and he confines himself to the discussion.

Having gone through this part of the letter and other matters, which, down to the end of the second column, amount merely to an apology for introducing the subject to his lordship; after entreating that he may not be misrepresented, and after stating the verdict for 700*l.*, he says, "Surely, my lord, political prejudices and party feelings could have had no share in the verdict they gave. I hope not. I impute no intentional error to the individuals impanelled on this trial; but juries are men, and I must therefore excuse them for frailties incidental to human nature, since I cannot justify them on the score either of liberality or discernment."—Is there any thing here that looks like a libel?—That juries are liable to err—that juries are liable to give very wrong verdicts, there is no person who will venture to deny; but in this case the writer, instead of attacking

the verdict of the jury, improper as he considered it, with any terms of reproach, says, he hopes it did not proceed from political prejudices or party feelings;—he attributes it to the ordinary failings of human nature. Why, gentlemen, if a person should cautiously endeavour so to speak of the verdict of a jury, that no man should conceive he meant to cast any reflection upon it, it would be precisely in the language this writer uses. You find him most anxious to search out and explore a justifiable motive for what he conceives so inconsistent with the justice of the case.

The letter then proceeds in these words,—“For nearly three years had this unfortunate man languished and wasted his health and strength in confinement, when a noble and patriotic statesman stepped forward, and a bill was introduced into parliament for the relief of insolvent debtors; its humanity was unquestioned, its policy and expedience were generally admitted (your lordship excepted), and it had nearly received the final sanction of that branch of the legislature of which you are a member, when you suddenly and unexpectedly started up in your place, and proposed the insertion of a clause, which was readily, too readily adopted, refusing the benefit of this act to all those who were confined upon an action for defamation! It is difficult to conceive an adequate motive for this new and unprecedented regulation, I do not say (and heaven forbid I should believe) that it was with a particular reference to the individual case of Dickie, that you proposed this obnoxious amendment; but I do say, that it completely produced the effect of depriving him of all hope of future consolation, and of dooming him to end his days in a gaol; you are therefore, if not designedly, at least accidentally, the sole, as well as original cause of his cruel detention.” This paragraph follows that which I read attributing the verdict of the jury to their frailties as men liable to the infirmities of human nature, bespeaking at the same time a little indulgence for the manner in which he should argue the case. What was the case? It is not denied by the attorney-general. An action was brought by Mr. Aris against Mr. Dickie, for a slander upon his character. The lord-chief-justice had summed up the evidence, recommending considerable damages against the defendant. The jury gave considerable damages; the defendant was unable to pay them, and consequently he was sent to gaol. Some time after this, an insolvent bill was brought into parliament. Upon one of the readings of this bill, the lord-chief-justice proposed a clause—not (I admit) to confine for life persons who were in custody for the damages given for criminal conversation with a plaintiff's wife, or for the seduction of his daughter, or for any malicious injury—but, simply to exclude them from the benefit of that act; and in effect the clause did, among other

things, continue in confinement persons who were in custody for damages awarded against them for defamation. It was a clause inserted at the instance of the noble lord; for, though it was a clause which had been inserted in preceding Insolvent acts, it had not been originally incorporated into the bill then under the consideration of parliament. The operation of the clause, at least that part of it which related to persons under confinement for defamation, of course applied to the case of Mr. Dickie; but it so happened (and it was somewhat extraordinary) that Mr. Dickie was the only one who came within its operation—he was the only person in custody for damages for slander!—and he, you will recollect, was in custody for slandering Mr. Aris, the governor of the Cold-Bath-Fields prison:—therefore, you see clearly what the object of this writer is—he compares what he conceives the unreasonable severity which was exercised towards Mr. Dickie with the want of what appeared to him a necessary degree of severity against the defendant in the case of Boyce and Bayliffe, and he is at a loss to account for the reason why the lord-chief-justice should bear so hard on Mr. Dickie, and press with so lenient a hand upon captain Bayliffe.

That is the fair way of putting the argument. He states that he is not a lawyer, and does not understand the intricate subtleties of legal reasoning, and he is therefore at a loss to find out the reason for treating Dickie so harshly and captain Bayliffe so favourably. He does not say that it was for the purpose of meeting the case of Dickie that this clause was introduced; in fact how could he say so? He was doubtless sensible that, in all probability, lord Ellenborough did not know Mr. Dickie, and therefore the writer says that he does not know whether the case of Mr. Dickie was in the contemplation of his mind at the time he proposed the clause. Now I think, if lord Ellenborough did require any apology from the writer of this letter, he does not require one from me, the thing itself shows what lord Ellenborough's meaning was—it shows that the case of Mr. Dickie never could have been an object of his thoughts at the time he proposed the clause.

With respect to the case of Boyce and Bayliffe, which was an action in the court of King's-bench, and in which, upon the evidence, the judge was to give his opinion to the jury, it appears that he advised them to hold the scales of justice even between the parties, and not to give damages to the plaintiff, if they thought the plaintiff had behaved improperly; because, in that case, it would have been to have given him a remuneration he did not deserve, and to have taken money improperly out of the pocket of the defendant. —Again, I admit, with respect to the letter upon the case of Mr. Dickie, that, when his lordship came to see this Insolvent-bill,

and observed the clause which had always been introduced into similar bills omitted in this instance, he might naturally have said, "What is the reason of the omission of such a clause? What is the object of the act? It is to relieve those who are, from distress and losses in trade, under confinement. It is to relieve those who have not disgraced themselves by any dishonorable act. It is, that such honorable persons shall not continue in gaol if they are not able to pay their debts, but that they shall be discharged; but the act ought not to extend to those who are in confinement for the consequences of a conduct which is deliberately malicious. If a man has debauched the wife of another, or seduced his daughter, or maliciously taken away his character, such a person is not within the principle of the relief to be granted; and, however probable it may be that his confinement may be of long endurance, yet, as the injury that he has committed against another is serious, and as the malice he has evinced is great, it is fit that, if he cannot pay in his purse, he should pay in his person." I am convinced that such was the object of the noble lord, and that such was the mode of reasoning within his own breast when he proposed the adoption of this clause to the legislature; but I am persuaded, that, if a similar act were now to be introduced into parliament, such would not be the conduct of lord Ellenborough; for, though he might still approve the principle upon which he had before acted, yet I think he would cautiously avoid applying it to this particular instance, for he would say to himself, "If I see a man suffering a greater and more aggravated punishment for an offence than what would have been inflicted on him if he had been prosecuted in the court of King's-bench. When I see that he has no prospect but that of being immured all his life in a prison because he has no chance of paying the debt for which he is confined; although I think that the libel for which he is suffering was a vicious and malicious libel, yet he has atoned for his offence; he has undergone more punishment than the judges of the land would have inflicted, and therefore it is fitting and justice requires that Mr. Dickie, who has already endured so much, should now be liberated."

Gentlemen, whatever the event of this cause may be, I have no doubt but this letter will have the effect I have anticipated, now that the noble lord knows there is a person languishing in gaol under the circumstances I have stated. I am persuaded that his lordship will feel joy and satisfaction at hereafter being instrumental in preventing a person continuing in gaol, with the probability of suffering perpetual imprisonment under such circumstances.

There is another part of this letter which I must read to you—the writer says, "Were it possible to entertain an idea that your lordship, in proposing this new and extraordinary

clause, was influenced by personal motives or vindictive resentment, horrible must be the prospects of those hapless victims who at any time may await your judgment, or come within your reach. The infamous Jeffries would sink to nothing, in comparison with a character who could wear the ermined robe of justice only to conceal the dark workings of a black and malignant heart, and prostitute the venerable functions of a judge to ministerial tyranny and oppression. I sicken at the thought! My only hope would be, if ever such a wretch should stain the mercy seat of England, or pollute the sacred fountain of our holy laws, that he should quickly meet the fate of Jeffries and be torn in pieces on the bench." The observation which my learned friend, the attorney-general, made upon that part of the subject was, that the meaning and intention of this paragraph was, to compare the conduct of lord Ellenborough with the conduct of judge Jeffries, and thereby to excite the people to kill the present lord chief justice, and to tear him to pieces on the bench in the manner in which the people had formerly torn judge Jeffries to pieces on the bench; but the attorney-general has told you that such is not the present disposition of the people of this country. Why, gentlemen, if such had been the meaning of the person who was the author of this paper, you would at once declare he was a madman, for, unless he was to state some grounds similar to those which existed for attacking judge Jeffries—do you believe that even the very worst of men would attempt to wreak their vengeance upon lord Ellenborough, with regard to whom they were not told that there was any charged imputed to him, or that he had been guilty of any public offence in his administration of the laws which rendered him, as judge Jeffries had been, a fit object for public fury and indignation.

But, gentlemen, throughout the whole letter the writer has expressly stated, that he does not wish to censure the conduct of the lord chief justice. He states that he does not believe his lordship's conduct to have proceeded from vindictiveness, but still, that without any intention, he has occasioned the misfortunes of this poor man; and then he puts a supposititious case, and states, that if ever any chief justice shall act from motives of revenge or personal malice, that such a man is worse than judge Jeffries; that he would pollute the ermined robe of justice, and, like Judge Jeffries, would deserve to be torn in pieces on the bench. Now, I really cannot say, that such a wish contains any thing hostile to the administration of the justice of this country. I cannot say that there is any thing libellous in this expression.—He states merely his wish that if the present lord chief justice should act as judge Jeffries acted, that he should meet the fate of judge Jeffries. Putting an improbable—an impossible—case, he wishes that if a judge should act similarly

to judge Jeffries, he should experience the same treatment. There is surely nothing libellous in expressing such a wish. I, for my part, disagree with the writer with respect to the opinion he has so expressed. I do not wish, supposing a judge to be more criminal, if possible, than ever judge Jeffries was, that he should meet with a similar fate. I think that it would be a much more dignified proceeding to let the law take its due course, and that he should expiate his offence upon the scaffold. The law of England is sufficiently strong to bring the highest criminal to justice. But if a person referring to the conduct of judge Jeffries expresses a wish that any one who imitates his conduct, may meet with a similar fate; I do not know that such a wish is unconstitutional, though it may be irregular; but this I know, that it cannot, by any fair construction, be considered a libel upon the present lord chief justice.

Gentlemen, there is but one other sentence to which I wish to call your attention. The writer says, "but the length of this letter obliges me to conclude, and apologize to your lordship for requesting your attention to a future letter, when I shall have a suitable opportunity to resume the subject."—I have read that, in order to obviate an observation, which, in the reply, may come from the attorney-general. You observe that the writer ends this letter by apologizing to his lordship, and requesting his attention to a future letter.—The attorney-general may say—"Where is that letter? Why is there no other letter? I will tell you why—it was meant as a blind—the writer only says this to make you think something more is coming. He wishes that all the poison of this first letter should rankle deep in your hearts; but he takes care that the antidote to it shall never come forward." I am afraid of an observation to that effect—I anticipate it, and my answer to it is this: As the first letter was published on the 20th of December, so the second letter was published on the 17th of January, which is exactly a month between the publication of the first letter signed "JUNIUS," and the second letter signed "JUNIUS." Gentlemen, in a paper like this, the editor cannot, every Sunday, dedicate his columns to the same subject. The writer upon a particular subject, may not be every Sunday ready with the matter which he wishes to publish. Here, then, we see that a month had intervened between the first publication and the second. Is it not, therefore, fair and reasonable to suppose, that another month would have intervened between the publication of the second letter and the third. But what takes place in the mean time?—Why the attorney-general says "you have been writing two letters which are libellous, and I will file my information against you for writing those two letters." I will, therefore, ask you whether any man who was in his senses would, under those circumstances, have

ventured to write a third letter? He would naturally say to himself, "I do not know what ground the attorney-general may have for proceeding against me: but I will at least take care not to get deeper into the mire than I am—what I have already published may be looked upon as a libel; at any rate I will not meddle farther with a subject which the attorney-general thinks ought not to be meddled with." This, I think, amply accounts for the letter which was promised, not having been afterwards published.

While I have been making these observations, I remind myself of one which fell from the attorney-general. He observes, that the writer of this letter says, "upon reading the case of Aris and Dickie in the newspapers," and he acknowledges that he has not a printed copy of the report of the trial by him, and therefore that he took the facts from the petition presented to the House of Commons by Mr. Dickie; and the attorney-general says, that the writer of the letter refers to the authority of the defendant, in order to ground the observations he makes. Now, gentlemen, what better authority could he have? It is not likely that the defendant, Mr. Dickie, would, in a petition to the House of Commons praying for redress, put and state facts which he could not prove—facts, which, if untrue, would unquestionably prevent him from obtaining the redress he sought.—The writer of this letter had no other statement of the facts to resort to than the petition of the defendant himself to the House of Commons; and when the attorney-general asks why he did not refer to a printed report of the trial, the answer is plain—There was none.

Mr. Attorney General.—I have the printed report of the trial in my hand.

Mr. Clifford.—It may be true that there was a printed report published; but the writer of this letter evidently did not at the time know that there was such a publication, and therefore it having been published without his knowing it, makes no difference with respect to my argument. Not having the printed report by him, the writer of the letter refers to the petition of the defendant stating the facts which he was entitled to prove, and then he argues in the manner you have heard read.

Now, gentlemen, having gone through all the letters, I shall take the liberty of addressing to you a few general observations on the subject of the law of libel. The attorney-general has not stated to you precisely, what the law of libel is. He has stated the outline, but he has not particularly stated to you the principle and grounds of the law of libel. Now I conceive the proper description of a libel to be this:—The publication of a writing calculated to do mischief with a mischievous intent, and not only with a mischievous intent, but with the intent which is ascribed to it. Now in all cases of criminal

law, the act must not only have an immoral tendency, but originate in a malicious intent; and if either the immoral tendency, or the malicious intent be absent, there can be no libel; for instance, suppose I have great malice against a particular person, and that there is a road by which I am in the habit of passing through his grounds—suppose I know that nothing hurts him so much as to destroy his game; that, notwithstanding I know this, while I am crossing his road I see a pheasant, and I fire at it, and kill it: I cannot easily have a more malicious intent. Suppose the owner is watching me, and he happens to be behind the hedge opposite to where I fire, and that, in firing at the pheasant, I had killed the man—that is not murder: for though I had malice, I had not the malicious intent that constitutes murder. I cannot put a stronger case. You must find a malicious intent, and that the act done had a tendency to do the mischief.

When you have well considered what were the motives of this writer—when you have read, not detached parts, but the whole of his publication, I flatter myself you will think it was written with the motives I have stated, and then you will ask yourselves (if it had that intent) what mischief had it a tendency to produce? Was it likely that the writer, by finding fault with the summing-up of the judge, and the jury not having sufficient evidence, or because the attention of the world was drawn to the hardship of Mr. Dickie's case (and it was a case of great hardship to him), do you think that by comparing the conduct of the judge in these two cases, any mischief could arise in the mind of any man? He declares that he does not mean to impute improper motives, then why should you impute to him that which he did not mean to impute to them? You will, on this part of the case, take this into your consideration, and not find a verdict of guilty unless you are fully convinced of the evil tendency of the publications, as well as the evil intent of the writer.

There are a great variety of questions which press themselves upon this part of the case. It is natural to ask how we have got into such a state of degeneracy, disorder, and tumult, that now, for the first time in our history, we are libelling courts of justice.—Gentlemen, I do not think we have shown that disposition more than our ancestors before us. It is an offence which is not peculiar to our own times. I should have expected that the attorney-general would have shown you that there had hardly been a reign wherein the best men had not been libelled, and wherein it had been the misfortune of the attorney-general to come before juries, and ask for verdicts against the libellers. Now I do not assert it, but I believe it to be a fact that, the attorney-general cannot give me an instance since the Revolution; though the conduct of judges and juries has been arraigned upon all

sides, yet I believe he will not be able to produce an instance of a prosecution for a libel upon a judge.

I have taken pains to find out what precedents there are, and I shall state them to you, for they furnish a very strong argument in my favour:—The first is a prosecution in the Star-chamber for a libel on the lord chancellor Bacon*, the libel was this:—It was a petition to king James the First in the Star-chamber—the words were these, alluding to the lord chancellor Bacon:—"He that judgeth unjustly must, to maintain it, speak untruly, and the height of authority maketh men to presume." This is like the present publication, accusing lord Ellenborough of a bias to arbitrary power—the defendant was convicted and sentenced; but in addition to the charge of injustice in the lord chancellor, he was accused of corruption, which was considered as a great libel on so pure a man as lord Bacon, and a great indignity to the king.

One of the judges, lord Hobart, uses these words respecting the right of petitioning against the sentence upon that occasion, he says, "So that, without controversy, a man may petition against a sentence—for God forbid, that we that are judges should draw that privilege to ourselves to give sentence, and not to hear it examined."† Here, you see, even in the Star-chamber, the judges admit the right of the subject to exercise a judgment on the decisions of the judges. Now, I am not at all surprised, that, in the Star-chamber, the lord chancellor Bacon should have brought forth that prosecution; but it is a remarkable circumstance and singular coincidence, that the very same person was afterwards accused of corruption by impeachment in the House of Commons, was convicted, removed, and degraded from his offices and honours.‡ No wonder that the lord chancellor, who felt where the shoe pinched, wished to put a stop to any investigation of his conduct, for fear it should lead to a discovery of his corruption.

In the reign of king Charles the Second, I find four instances of this kind; one in 1680, which was the case of Smith,§ who was indicted for a libel on chief-justice Scroggs for his summing-up to the jury in the case of Harris, the defendant submitted, and a small fine was imposed upon him. In the next year was the case of Radley, who was also sentenced for another libel on lord-chief-justice Scroggs—he had accused him of corruption in receiving money for the acquittal of Dr. Wakeman. In the same year there was another indictment against Henry Carr.|| I have already stated to you that chief-justice Scroggs was accused of corruption:—There

* Wraynham's Case, 2 How. St. Tr. 1059.

† Ibid. 1077.

‡ 2 How. St. Tr. 1087.

§ 7 How. St. Tr. 931.

|| 7 How. St. Tr. 223.

was, at that time, a fear of a Popish successor, and there was a bill before parliament for removing the duke of York, who was afterwards James the Second, and chief-justice Scroggs was accused that, whenever there was a trial against any who were Papists, he screened the Papists, and got rewards for so doing, and he was accused of having received money for the acquittal of Dr. Wakeman. The indictment against Carr stated, "that he, minding and maliciously intending the government of the kingdom of England, and the administration of justice in the same kingdom, to scandalize and bring the same into contempt, the first day of August, in the 31st year of our now lord the king, at the parish of St. Sepulchre, London, a certain false, scandalous, and malicious book, intituled—'The Weekly Packet of Advice from Rome; or, the History of Popery,'—maliciously and unlawfully hath printed, and caused to be published. In which book is contained, among other things, as followeth:—'There is lately found out by an experienced physician, an incomparable medicament, called, the Wonder-working Plaister, truly Catholic, in operation, somewhat of kin to the Jesuit's powder, but more effectual. The virtues of it are strange and various. It will make justice deaf as well as blind—takes out spots out of the deepest treasons more cleverly than Castile soap does common stains—it alters a man's constitution in two or three days more than the virtuoso's transfusion of blood in seven years;—it is a great alexipharmick, and helps poisons, and those that use them—it miraculously exalts and purifies the eye-sight, and makes people behold nothing but innocence in the blackest malefactors—it is a mighty cordial for a declining cause—stifles a plot as certainly as the itch is destroyed by butter and brimstone—in a word, it makes fools wise men and wise men fools, and both of them knaves. The colour of this precious balm is bright and dazzling; and, being applied privately to the fist in decent manner and a competent dose, infallibly performs all the said cures, and many others not fit here to be named.'"

Now, after the introduction of this libel, there could not be much doubt of the meaning of the libel, and the Court of King's-bench considered it to be a gross libel on the judge, accusing him of receiving money and procuring malefactors to be acquitted, who otherwise would have been found guilty. At first it may seem odd, that I should state these cases to you—but I state them for this reason, that every one of these cases which I have mentioned as brought before the Court of King's-bench, was afterwards made the ground of parliamentary impeachment against chief-justice Scroggs—he was not impeached for his conduct to those whom he had prosecuted for accusing him of corruption, but for his conduct to Harris in the

summing-up of the evidence upon his trial.*

It is odd that it should appear, that in the history of prosecutions of this country, we never should have had a prosecution for libels upon judges, except in those instances where the conduct of those judges was vulnerable, and where they were afterwards punished for that conduct by parliamentary impeachment. Do not let me be supposed to have made any invidious insinuation, as if I meant to say, that there is any such feeling on the part of the lord-chief-justice; I dare say he has nothing to do with these prosecutions, I dare say that the attorney-general, seeing these publications and fancying them to be libels, thought it his duty to prosecute them, and that he did so without the interference of the lord-chief-justice. But I do think it would have been acting a more magnanimous part—I do think it would have been placing the lord-chief-justice in a more dignified point of view, if the attorney-general had said, "Here have been persons prosecuted for libels upon judges, but they have never been prosecuted except by the vilest persons; and I will not put lord Ellenborough into such an invidious situation, as prosecuting this publication will place him;—I will not put him into a situation in which any person may be led to suspect him; and as all judges who have gone before, however they might have felt hurt have only laughed at these things, therefore lord Ellenborough shall not stand as a single and solitary instance of a judge who has acted the other way. I might pursue this subject, but I am really exhausted—I might go much farther in stating to you the different cases, but I shall not do so;—I shall however state one or two circumstances, which will show you what has been the practice for the last century.

In 1704, when Holt was lord-chief-justice—(I quote this like the case I quoted before from the State Trials), in the case of the king against Tutchin, upon coming into the court one day, one of the counsel, whose name was Broderick, was embarrassed and could not well go on; upon which Mr. Montague said, "My lord, I believe that Mr. Broderick is afraid of my fate in this case; I have been very much reflected upon for being counsel in this case, and it has been spread about all the counties of England, by Dyer the news-writer, that I broached seditious principles at the trial, and was reprimanded by your lordship for it, and I believe Mr. Broderick is afraid of the like scandal:"—upon which lord-chief-justice Holt said, "You must not be afraid of scandals—Dyer is very familiar with me too sometimes, but you need not fear such a little scandalous paper of such a scandalous author."†

* Scroggs's Case, 8 How. St. Tr. 163.

† R. v. Tutchin, 14 Howell's State Trials 1150.

You see lord-chief-justice Holt says, "Do not mind this news-writer, he is sometimes attacking me, but I treat him with contempt, and I do not think it fitting he should be treated otherwise." If the attorney-general had felt the same way, I am sure he would have been convinced, that he would have best consulted the dignity of the Court and of the noble judge in abstaining from this prosecution. In our time we recollect, that although the letter of Junius to the king was thought a fit subject for prosecution, yet his letter to lord Mansfield was not so considered. We know that, in the House of Lords, lord Chatham told lord Mansfield, that "he had done what was censurable—that he had travelled out of the record." * I do not know what more right lord Chatham had to find fault with lord Mansfield in the House of Lords than I have to find fault with him out of it; it shows that it is the general practice, as it is the right, fairly to descant upon the conduct of judges, and the manner in which the law is administered by them, either in civil or criminal cases.

I have a case of a rape and murder at Oxford, where the judge recommended an acquittal. There was a publication with respect to that trial, not written in a common newspaper, but inserted in one of the Oxford Magazines. The author put questions to the judge as to the motive which had influenced the prisoner to commit the crime, "It could not be love," he said, "for there could be no inducement why a boy of only twenty years of age should commit a rape upon a woman who was sixty-five years of age, and then murder her; but it was evident," said the writer, "that the rape and the murder had been committed—the boy was there on the spot—his clothes were covered with blood, and his own knife was found near the corpse,—and yet, because you think it unnatural that a boy should commit a rape on an old woman, and then kill her, you direct an acquittal." These were thought to be only decent and fair observations at the time.

There is one case of a later date—I mention it, because it must be in the recollection of the attorney-general. If there is one case with respect to which I were to say the attorney-general had given more pleasure and satisfaction to those who heard him than another, I should say it was the case I am going to allude to. It was in the State Trials of 1794. The attorney-general will immediately recollect, that after the charge by the lord-chief-justice Eyre to the grand-jury upon those trials, an answer came out to the charge. I must state it—it begins—"It is one of the first privileges of an Englishman to discuss the proceedings of courts of justice." [Here the learned counsel proceeded to read a considerable part of the pamphlet, as well as

the charge to which it referred. See them in Vol. 3 of this Continuation, pp. 200, 210.]

I need not trouble you with any other remarks on the judge's charge; I mention it in order to show you the way in which persons have thought fit to canvas the proceedings of courts of justice. At the time of the State Trials of 1794, you recollect how very high party ran, and what advantage was taken of persons who had been guilty of libels; and even in these times of party, when these comments were formed into pamphlets, there never was any notice taken of them, though the language is very severe. They had the good effect the author intended; for, the lord-chief-justice, upon the trial, certainly did soften down the principles which he had urged to the grand-jury.

On looking into this case, I thought it might be advisable, not merely to look into law books, but to see how persons who were not lawyers thought upon the subject of discussing the conduct of courts of justice, and I thought I recollected what had been the language of poetry. Gentlemen, we all know that cardinal Wolsey was the chancellor of Henry the 8th, and that owing to his conduct in that high situation, he was, upon grievous complaints made to the king, removed from his situation, and died on the road as he was coming from York to answer the charges against him. Our immortal Shakspeare gives the whole of this proceeding. He describes, that some time before this, in the presence of cardinal Wolsey, the queen had stated to the king the grievances of his subjects, and had charged cardinal Wolsey as being the author of them; and then the language which Shakspeare makes cardinal Wolsey use in his defence, seems to me to be extremely applicable to the subject: he says,

"I have no farther gone in this, than by
A single voice, and that not past me, but
By learned approbation of the judges. If I am
Traduced by ignorant tongues,—which neither
know

My faculties nor person, yet will be
The chronicles of my doing,—let me say,
'Tis but the fate of place; and the rough brake
That virtue must go through——
———If we shall stand still,
In fear our motion will be mock'd or carp'd at,
We should take root here where we sit, or sit
State statues only."

The imagination of Shakspeare has given us, as far as the imagination of man can give us, an idea of what were the feelings of this person—a man in high authority at that time, the first minister of state of this country, accused before his sovereign upon charges preferred by the lowest of the people;—what is his defence? at least, what is the defence which the imagination of Shakspeare makes him urge? He does not tell the king to punish those who charge him and his colleagues with malversation! The imagination

* 16 New Parl. Hist. 1313; 1 Woodfall's Junius, 369, note.

of Shakspeare did not go to an information or an indictment; but it is extraordinary, that the workings of the imagination of Shakspeare should have been in unison with that which has been the practice of all the judges since the Revolution, and of all before, except those who had been guilty of the crimes they wished to screen.

There is no other general topic upon which I wish to trouble you; but let us see whether, under the peculiar circumstances of the present times, there is not a necessity for enlarging the privilege of commenting on the proceedings of courts of justice, rather than of abridging it, and punishing men for claiming the exercise of it. I speak much in favour of this country, when I say, that there never was a time when the public were subject to such burthens as they are at present, and there never was a time when they so cheerfully submitted to endure the taxes. When you see that is the case, will you not pause a little before you give them *cause* of complaint? Where there are so many grievances, so many burthens, there must be new complaints every day and every hour; and it is for the benefit of the country that every existing complaint should come to the ears of government, that redress may be applied before the grievance has gone too far. If you make it difficult to publish accounts of the conduct of judges and courts of justice, you will take away one of the fences by which the public are protected.

Let us see the situation in which, and in what point of view we shall appear in the eyes of the world at large. We were told, in the speech delivered by the commissioners of the king at the opening of the parliament, that this was the crisis of the country. How came the country to be at its crisis? How! No man can doubt but that it is by the war in which we are engaged. Then let us see what are the grounds of this war. That we would not surrender to France the privilege we enjoy in the liberty of the press, is the only ground upon which the present war is justified. When Napoleon and Talleyrand made a demand to cramp the liberty of the press in this country,* when he complained that every vessel that came from our shores brought him libels upon his person and government, the answer of lord Hawkesbury was noble: he said, he would not cramp the liberty of the press; he would rather go to war than restrain the free exercise of such an invaluable blessing. Now that was sound constitutional British conduct. I hope we shall ever be ready to go to war, rather than surrender that right; and I hope too, that juries will go a great way before they consent to restrain the free exercise of such a blessing.

* *Vide* the Papers relative to the Discussions with France, 36 New Parl. Hist. 1259.

Here is a charge delivered by a judge to a jury, or here is a speech delivered in parliament: they are published; people read them, and are dissatisfied. They give their reasons why they think the judge or the person delivering the speech was in error. They tell the public that they perceive some doctrines which are calculated to excite alarm, and they desire the public to be vigilant. Now, suppose a jury, upon the suggestion of the attorney-general, finds a man guilty of a libel in having published such observations, what a fine thing would it be for the *Moniteur* to descant upon; with what exultation would the editor of that paper, in the first publication after he heard of such a conviction, say, "The English government will go to war rather than surrender the liberty of the press, when it is used in order to libel and abuse the princes and authorities of foreign countries; but the moment a writer indulges in any latitude of remark with regard to their own magistrates, he is immediately convicted upon an information of the attorney-general, and punished with the utmost severity!" What a triumph will this be over the Trial by Jury! It will show that we hold ourselves out to the enemy in colours different from those in which we wish to exhibit ourselves at home.

There is one subject I wish you to attend to. You must find them guilty, if at all, upon the publication of these papers with the motive assigned in the information. In this case you have two defendants: one is the proprietor and the other the printer of this newspaper; and I take it, there is a great distinction between a proprietor and printer. A proprietor, who receives the whole profit of the paper, may publish with a malicious motive; but a printer, who is paid at a low rate for his manual labour, who merely lays the letter with the assistance of the devil who holds the bottle of ink, to say that he must publish with a malicious motive, is an absurdity which I cannot unravel: and if you should even think that Mr. White published these papers with the motive attributed to him, you will pause before you ascribe to Mr. Hart such motive or any other motive except that of doing his daily work. I do not wish to have it understood that I make this distinction because I think Mr. White is guilty. I think he is not. But not knowing whether you will agree with me, it is my duty to take up every mode of defence, and submit it to your consideration.

I stated to you in the outset, that it was not even enough that the parties had published these papers with the motive imputed to them in the information, but, before you can give your verdict against them, you must be satisfied that the papers published were published in London. Now, what is the evidence that can satisfy you that these papers were published in London? It depends upon the construction of the act of

parliament. They put in a certificate from the Stamp-office (which you know is not in London) and an affidavit of Mr. Hart and Mr. White, which states that the one is the printer and publisher, and the other the proprietor, of the newspaper called the Independent Whig; and that the printing-house is in Warwick-square: and they then put in two newspapers, which, whether they came from the skies or elsewhere, they do not take upon them to say. You are in the dark upon that subject, and you would have been entirely so, if it had not been for a question of mine to the witness. You see the name of Hart at the top and the name of Booth at the bottom of this paper; and my learned friends fancy, that under an act of parliament this is sufficient proof of publication. But, with deference to them, I think it is not, and that it would be extremely hard if it was; for, I may publish a newspaper containing a gross libel, and yet the publication may be innocent; and if they put a witness in the box to prove he bought it at my office, I may cross-examine him, and prove the manner in which, and the reason why, I sold it to him; but if they produce a paper of this kind, I am debarred of all the advantages of a cross-examination.

I will put a case. I will suppose that a person inadvertently prints a libel, and another tells him, you must not publish it, it is a libel. A man afterwards comes to him and says, sell me one of these papers. The printer says, no, I will not publish it. The other says, you may safely sell it to me. The printer says, why may I safely sell it to you? Because, replies the other, a magistrate wishes to see it; lord Ellenborough wishes to read it; there can be no harm in sending it to lord Ellenborough; to give a libel to a magistrate is not a publication.—I ask you, am I to be debarred from the means of proving that?—Am I to be deprived of the benefit of showing, by cross-examination, what were the circumstances under which I let the paper go out of my hands?

I shall take his lordship's opinion whether the publication is proved. The second section of the act directs, that the names and places of abode of every person intending to be the printer, publisher, or proprietor, of any newspaper, together with the title of such newspaper, and the place where it is printed, shall be set forth in an affidavit, to be filed at the Stamp-office. It then says, that when the printer, publisher, or proprietor, is changed, or they shall change their places of abode, notice of the same shall be given to the Stamp-office. Now, all that the affidavit can prove, is the name of the printer, publisher, and proprietor, and the place where the paper is printed; which, you will recollect, is quite a different thing from where it is published; for it is one thing to print, and another thing to publish.

The ninth section says, that all affidavits

or copies of them certified to be true, shall respectively, in all proceedings, civil and criminal, touching any newspaper mentioned in such affidavits, or touching any publication contained in such newspaper, be received and admitted as conclusive evidence of the truth of all such matters, set forth in such affidavits, against any person who shall have signed or sworn the same. This affidavit merely states the place where the newspaper is printed, and the names of the printer, publisher, and proprietor. I do not object to the affidavit being evidence of those facts, but further than those facts I do contend that it is not evidence.—Then it says, that in some part of every newspaper there shall be printed the true name and description of the printer and publisher; and then it goes on to say, that after such affidavits shall have been produced in evidence, and after a newspaper shall be produced in evidence, entitled as the newspaper mentioned in the affidavit, it shall not be necessary for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by the act, to prove that the newspaper, to which the trial relates, was published at the house, shop, or office, of the defendants.

Now this, you see, applies only to cases where penalties are to be recovered against the printer, publisher, or proprietor. It states, that when persons bring actions for the penalties imposed by the act, the affidavit is evidence that the party sued is the printer, publisher, or proprietor.

The only other clause necessary for me to mention is the eleventh, which enacts, that after such newspaper is produced, having the same title as is mentioned in the affidavit, it shall not be necessary for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties, to give any other evidence of publication. Now, with great submission to his lordship, it does not seem to me that these clauses (which are the only clauses that make this affidavit evidence) do not apply to cases of this nature, but only to cases where penalties are given by the act, and where a party prosecutes or sues for the recovery of the penalty: and there is good reason for this; because the printer, publisher, and proprietor, are answerable for the penalties.

Then, supposing this last is the only case to which it applies, see what it comes to: the words of the act are, "After such newspaper shall have been produced in evidence, it shall not be necessary to give any other proof of the publication." How produced in evidence?—The act does not direct any new mode of proof; it only takes for granted, that the newspaper is to be proved in the usual manner. The act of parliament, according to what I take to be the true construction of it, says, you shall give on oath the names of the printer and publisher,

and deposit one of the papers at the Stamp-office. That is what the act directs; but does it say, therefore, that the printer and publisher may be prosecuted in any part of the kingdom? Suppose Mr. White, not having published any of his newspapers in London, had taken one number of the Independent Whig to Northampton, and had given it to a waiter at a coffee-house; suppose the witnesses to prove the publication of the paper were all at Northampton, would it be contended, that merely producing the paper was evidence that he had published it in London? It does seem to me so absurd, that I do not think such a proposition can be maintained; it does seem to me, that the object of this act of parliament is, to put the person, who sues under it, in the situation, that, when a libel has been inserted, he may know where to find the libeller. We know that false places of abode might have been given in, and therefore the meaning of the act was, that when a party came into a court of justice to complain, he should not be turned round by being told that it was necessary for him to prove the publication at a particular place; that is, the act of parliament means, that when the paper shall have been given in evidence, and the publication proved in a county where the jury trying the libel are sitting, there need not be any other proof of the publication.

These two newspapers, which have been given in evidence, appeared to be signed with the name of Hart at the top and the name of Booth at the bottom. I asked whether Booth was one of the commissioners of the stamps.—It was answered, that he was employed in the Stamp-office, but that he was not one of the commissioners. Now the act directs, that the printer or publisher should each day deliver to *one of the commissioners* of the Stamp-office, a paper signed, and that paper is made evidence against the parties; it is made evidence too in the case of an action for a penalty; but I contend that a publication to a commissioner of stamps merely, cannot be considered as sufficient evidence of a publication to support a criminal information; but at all events, in order to make it evidence, it must be proved that the paper produced was the actual paper delivered to the commissioner at the Stamp-office. I asked, whether the person, whose name appeared at the foot of the paper, was the commissioner appointed to receive it by the act of parliament. The witness said, No; that the commissioner was a gentleman of the name of Alom, and that Booth was not the name of a commissioner. How does it appear that this person named Booth had any authority or commission to receive the paper? whether he had a commission or not, we have a right to say that he had none; for, if he had, it has not been proved.

It is clear, that the place where the pub-

lication is proved, by the delivery of the newspaper under the provisions of the act of parliament, is Somerset-house, which, you know, is in the county of Middlesex; therefore it is clear that they have given evidence of a publication which did not take place in the city of London. His lordship will give you his opinion upon the construction of this act of parliament, and he will tell you that, if there is no proof of publication in London, you must absolve the defendants from the penalties of this information.

Gentlemen, I am sorry to have detained you so long; I shall request your attention for only a few moments longer. I agree with the attorney-general in the importance of the case, and I now wish only to repeat to you the grounds upon which I have rested the innocence of these defendants.

You will, I trust, view this case upon the principles upon which you wish your conduct in deciding it to be viewed by the country. You will, I trust, consider, if you find a person exercising the arduous duty of a public writer, acting fairly, conscientiously, honourably, and with no object in view but the public advantage, that you ought not for a slight venial error with respect to some particular mode of expression, wholly to condemn him. You will not blast his character by a verdict which may consign him to a severe punishment. You will look at the conduct of the author of these publications in the same way in which you would wish your own to be contemplated. If you find the writer actuated by an innocent and laudable motive you will, notwithstanding his judgment may have been erroneous, give him credit for the purity of his intention, and not load him with the imputation of guilt, merely on account of a warmth and intemperance of expression. You will give him credit for his feelings upon a subject calculated deeply to excite them. You will consider his conduct in this point of view; you will consider of what importance it is to the public, that the proceedings of judges and courts of justice should be fairly and openly discussed. You will consider, that this writer merely intended to impress upon the mind of the noble judge a conviction of what he conceived to be an error in his judgment. You will consider, that he did not intend to say any thing personally disrespectful to the noble lord; you will consider that his object was, to point out to him, as other writers have done with respect to other judges, what he thought the dangerous tendency of the doctrines he had delivered from the bench. You will consider, that, throughout the whole of his conduct in this case, he manifested the feelings of an honest independent man, influenced by the most patriotic motives, and feeling warmly the subject he was discussing: and you will not hold him guilty merely for that warmth and intemperance of expression which may escape the best of men, and which might have

escaped this writer, sitting down with the intention to do well, and to serve the cause of his country upon the question which was the theme of his pen.

If in any part of his conduct you should think he has acted wrong, if you should think that improper expressions have escaped him, you will, I am persuaded, attribute them to the frailty of human nature, and not to the bad and malignant motives which this information has imputed to him. I am sure you will be glad to find an excuse for any thing which may appear to you improper in any part of these letters,—founded upon that which I think must be the conviction of your minds, that his motive could be no other than the indignation he felt, at what he conceived a failure of justice in one instance, a too great severity in another, and upon the whole, a perhaps too intemperate zeal in the cause of the public. If you do so consider this subject, I am sure you can do no mischief by your verdict. Your judgment of acquittal will be to these poor men and their dependent families a source of inexpressible happiness. You will by such a verdict convince the world of the value and importance of the trial by jury, by giving these defendants the full benefit of it. You will evince to mankind, that the principle by which a British jury are actuated, is, that when there are doubts whether an act may be ascribed to a good or bad motive, it is the inclination of their breasts to ascribe it to a good motive. You will not look, as lord Kenyon was wont to say, with eagle's eyes, to find out a bad motive where a good one may be inferred, but will rather let the evidence in favour of the good motive preponderate.

Trusting that such will be the principles upon which you will return your verdict, I conclude, by returning to you my thanks for the patience and attention with which you have heard me.

[At the conclusion of this speech, several persons in the hall expressed their approbation of it by loud plaudits. The learned counsel retired from the court.]

REPLY.

Mr. Attorney-General.—May it please your Lordship. In this case a question of law has been raised by the learned gentleman who has just finished—I beg pardon—I should not call it a question of law, for he has gone to the jury upon it and has, in a speech of three hours and a half, endeavoured to convince them there has been no publication in this place.

Gentlemen of the jury, I think that this case has been now sufficiently displayed to you, and the nature, object, and tendency of the defence laid before you, in language much more intelligible than any I can use. I think it must appear to you, from what has passed in this court, with what arms it is that these defendants wish to defend themselves, and to what means the defendants are endea-

vouring to resort, for wresting their case from the just animadversion of the law.

As the learned gentleman, who has just addressed you, has left the court, I will abstain from what I was about to say. I am willing to give him credit for the learning and talents which he has exhibited in this most ingenious but at the same time most extraordinary defence, yet, although I have been witness to many addresses in this court equally eloquent and able, displaying as much learning and ingenuity, and I must say much more correct judgment than has been shown by the learned gentleman, I never have before witnessed an act of such indecency and impropriety as has been exhibited in the body of the court this day at the conclusion of the learned gentleman's speech. I must suppose it can only have proceeded from some extraordinary means used to procure such an expression of popular feeling.

With respect to that which has been stated by my learned friend—I correct myself, I should say, by the learned gentleman—upon the subject of publication, viz., that there is no proof that this paper has been published in London; the fallacy of the argument the learned gentleman has used, could not have eluded the vigilance of even an attorney's clerk. The act of parliament says, that the certificate of the affidavit shall be proof of all the facts contained in it; and that the paper produced shall be evidence against the printer and publisher; I produced the paper, and that is evidence to show who was the printer and publisher, and who was the proprietor; and the paper states that the publication was in London. I do not recollect any other technical objection upon which it is necessary for me to trouble you.

It is disagreeable to me to make observations that may have any appearance of harshness against a gentleman who is absent, but when that gentleman, having made his observations, chooses to withdraw from the Court, I must not on that account suffer myself to be precluded from replying to them. I will tell you why I recall the expression of "My learned friend." There is no courtesy I would not show, no expression of kindness I would not use, upon any occasion towards any gentleman of the profession. That I should without a reason be guilty of any thing which may seem uncourteous to a gentleman of the description of him who has just addressed you, I am sure never can be supposed of me—[At this time Mr. Clifford re-entered the Court.]—I was proceeding to state the reason why I had not continued to designate the learned gentleman by the name of my learned friend. It was, because after the manner in which he has addressed you as to my conduct in this case, it would have been mean and abject in me to have given him that appellation; for you see that he has carefully endeavoured to rescue the noble lord and every one of the jury from every one of the charges alleged against

them in these papers, and he has chosen to throw one of the most heavy accusations upon me, though the author himself had never ascribed to me the conduct which is the subject of that accusation.

You observe that it is imputed to lord Ellenborough, that he has deemed lightly of the sufferings of a young female, the daughter of a suffering father, at a time when that father was confined in irons. It is stated in this libel, that his lordship thought lightly of a freeman and an Englishman being confined in irons.—Now the learned gentleman says in his address to you, “I do not think lord Ellenborough does think lightly of an Englishman being confined in irons; but, I have the authority of the learned gentleman himself,” (meaning me, the attorney-general), that he “does deem lightly of such an invasion of a man’s person; for he has told you that that gentleman, by being kept in irons all night has suffered no inconvenience; and has argued that an Englishman and a freeman being put in irons was not thereby subjected to any inconvenience whatever.”* Now I would most readily attribute this misrepresentation to a misrecollection on the part of the learned gentleman. It is a grave imputation against me; it deeply affects my moral character; it invades my claim to that which I must be most anxious to possess—namely, the good opinion of good and moral men—I must deserve to be an outcast of society, if such a sentiment could be justly attributed to me.

I have a perfect recollection, that when I said the person who had been put in irons was subjected to no particular inconvenience, that I immediately corrected myself, and stated distinctly that what I meant was, that he had been subjected to no incidental inconvenience, beyond the circumstance of his having been confined in irons. I guarded as much as possible against such a malignant observation as that which the learned gentleman has addressed to you.

When I said that he had been subjected to no inconvenience, I wished to be understood as meaning, that he had been subjected to no particular inconvenience—that he had suffered nothing from any inclemency of weather—in short, that there had been no incidental inconvenience attendant upon the act of placing him in irons beyond the inconvenience which belonged to the mere act itself—not at all saying, or meaning to say (as it has been unfairly and unjustly represented to you) that it was no inconvenience to an Englishman and a freeman to be placed in chains. If the learned gentleman supposed that I said otherwise, I should be glad to hear him say so. If he says now, that he supposes me not to have said that, which I am sure all of you must remember, I wish him to say so.

[Mr. Clifford remained on his seat, with-

out noticing what the attorney-general had stated.]

Mr. Attorney General.—Then I am to understand, from the learned gentleman’s silence, that knowing that I had stated that this party had not sustained any other inconvenience than what the thing carried with it, and that I merely said he had been subjected to no particular inconvenience, he, with that knowledge, and bearing that fact in his mind, has purposely omitted to state that fact to you; for certainly he did state that he was sure I thought lightly of a freeman and an Englishman being placed in irons, and that I thought an Englishman’s being put in irons was attended with no inconvenience.

Mr. Clifford.—I believe the attorney-general stated, that there had been no particular inconvenience sustained by the party, beyond what he might have suffered by being put in irons—and I believe I so argued it.

Mr. Attorney General.—So then, my learned friend—for I will now call him so—argued that I was of opinion that the circumstance of a man being put in irons was no inconvenience, because I said he had sustained no other inconvenience beyond what arose from his being put in irons. If my learned friend had persevered in the mode of expression I first understood him to have adopted, I should have said it was a wicked misrepresentation; but I am content that he now says he did not mean to understand me as having said any such thing; and therefore all I will say is, that the inference he drew is beneath his understanding. I am sure it would require a person to be possessed of a degree of fallacy and meanness which does not belong to my learned friend, before he could arrive at such a conclusion with regard to my feelings, at the circumstance of an Englishman and a freeman being confined in irons. I can feel for the situation in which my learned friend is placed—I have heretofore been placed in the same situation myself. I know the difficulty of finding plausible topics on which to address a jury; and when we cannot find wise ones, we must sometimes have recourse to foolish ones. To be sure, the inference he has drawn with respect to my notions upon such a subject, is as weak a one as ever was urged.

I shall now proceed to give some answer to the very many observations he has made:—in point of fact, I think his speech has partaken very much of the nature of the libel itself; but this I do not impute to him personally, but to the nature of the case he had to defend. He has felt himself obliged, in every part of his speech, to clear those who are libelled from the charge against them, just as the libeller himself has done—but, at the same time, he has introduced topics, by which it is evident that he meant to fix those imputations, which it seemed to be his object to obviate—otherwise I am sure he would not

* Vide ante p. 1279.

have received the applause which he obtained.

In order to justify the defendants for publishing these libels, he states, that numbers of other prosecutions have been brought before this Court for similar publications, and some of them he enumerates. Now, this is the first time I ever heard the publication of one libel justified by the publication of another. Some of the publications he enumerated in a very extraordinary way—he stated that some of the prosecutions had taken place in the reign of Charles the second; and I own I was afraid he was going to state what had been the practice of juries in Charles the second's time.—He said that there had been four prosecutions against persons who had libelled chief-justice Scroggs; and that it had happened by a singular fortunate circumstance, that all the judges who had arraigned the conduct of those who had charged them with corruption had afterwards been detected in, and convicted of improper practices. Why, gentlemen, there are no persons present in this court, who were not led by the observation of my learned friend to the conclusion, that there would be the same result in this case.—There are none whose minds will not be carried to that conclusion by the observations of my learned friend; but my learned friend has a precedent for his argument, in the conduct of the libellers themselves.—They say, too, that they mean no harm—they say, God forbid that lord Ellenborough should ever conduct himself as judge Jeffries did—they say, that although they consider that they have brought their arguments to bear with respect to the cases they are discussing, yet that they mean nothing disrespectful to the lord-chief-justice. I know not what they may mean; but I well know what they have said of him.—And this reminds me of a saying of the late lord Chatham:—When a certain gentleman had uttered some improper expressions in parliament, that noble lord threatened to have them taken down; they were taken down; and the gentleman who had uttered them was called to account for having used them: he begged for mercy of the House, and said that he meant nothing by the expressions he had uttered. Lord Chatham said he hoped the House would not press severely upon the gentleman who had so submitted himself—but he would give that gentleman a piece of advice, by which he hoped he would regulate his conduct in future; namely, when he meant nothing, to say nothing. I hope that my learned friend when he has four cases which mean nothing, will, in future, omit stating them in a speech of four hours. If he meant any thing, he could only mean that the case before you was to be likened to them: which is imputing to lord Ellenborough this grave charge, that lord Ellenborough (who may know this prosecution is going on) is in the same situation as lord Bacon, or judge Scroggs; and as history fur-

nishes you with instances of the improper practices of those judges, so history will furnish posterity with instances of the improper conduct of lord Ellenborough.

There are a great many other topics in which my learned friend has indulged himself, but with respect to which I do not think it at all necessary to follow him. With regard to his representation of the manner in which I opened this case, I do not think it necessary to address many observations to you. He found fault with me for stating that I had been abstinent in forbearing to prosecute these defendants; he found fault with me for speaking of my boyish connections with lord Ellenborough; he found fault with me also for saying, that I had looked with a different eye at the publications of these defendants than I do at present, and that their future conduct would determine me as to the manner in which I should be disposed to consider them hereafter. Now, upon re-examining all I have said, I have no wish to recall any part of it. When any observations are made upon my conduct, or any attack is directed against it, it is not my disposition to feel resentment; the first sentiment of my mind is, to endeavour to find whether the charge is well-founded. If it be, I correct myself; and if not, I treat the observations with the contempt they merit.

It has been stated, that his lordship is not directed by the act of parliament to give you his opinion as to the matter of the libel; I am sure that observation cannot fail to have excited some surprise; I perceive that it has excited some surprise in the mind of the learned judge, that any one should have stated he was not directed by the act, to give you his opinion, whether this was a libel or not, but that he was only to tell you that if you were of opinion it was proved—then what? Why, that it *was* proved! My learned friend tells you that is all which the judges are directed to do. Why, gentlemen, those who introduced this act, were not such drivellers as to mean that the legislature should pass an act, having no other object than the one which my learned friend has stated. The question whether a publication is libellous or not, is to be determined by its contents; and whatever effect a writing has a tendency to produce, the intent to produce that effect is to be inferred from the tendency of the writing to produce it; and his lordship is directed by the act of parliament, to tell you whether the libel has the tendency imputed to it, and consequently having that tendency, that it was written with the intent charged in the information.

It has been said likewise by my learned friend, that the conduct of those who administer the government and the laws is open to be fairly discussed, as well as the conduct of private individuals, and that they are to be exposed to any attack that any one who chooses to say he is discussing a public subject thinks proper to level at them; and my

learned friend says, that the author of these letters is not to be convicted, because he has only attacked lord Ellenborough in his character of lord chief justice of England, and as a peer of the realm. Gentlemen, that the acts of government are fairly to be discussed, and that the people of this country are not to be restrained from access to the press, with a view to a statement of the cases which occur in courts of justice, is a proposition I do not deny; it is consonant to the received opinions of the present day. I do not controvert that doctrine; but can any one say that these papers are a fair statement of what has passed in a court of justice, or that they contain a fair statement with reference to the acts of the government? It is absurd so to argue; there is not a single paragraph which does not contain a direct attack upon the character of the noble judge, whom it was the intention of the author to hold out as an object of contempt and to render obnoxious to public indignation, regardless of the effect his libels might have, or perhaps not considering the probable consequence of them.

I shall not go through the discussion of all the speculative points which my learned friend has brought forward, from the works of Mr. De Lolme, or the letters to Mr. Almon, or other general writers to whom he has referred. I will only observe that for his legal doctrines he has appealed to no legal authority, but has contented himself with referring merely to Mr. De Lolme, to some general doctrines of his, inapplicable to the subject, and to one of the most decided political party pamphlets that ever was published—a pamphlet written with a view to cry down another pamphlet—a pamphlet published as I suppose his speech will be published—containing sentiments injurious to the public; who were the authors of that work I know not any more than he, but I know who the authors of these publications are, and that they are the productions of the defendants Hart and White. Whether my learned friend has any further knowledge upon that subject, I cannot tell; there is certainly a deal of legal acuteness displayed in the management of the arguments contained in them.

My learned friend says, you are not to impute these libels to the defendants Hart and White, because they are letters which they received from other persons, and that you have no right otherwise to consider them. He must know better than I how the fact is—he must know it, because he must have had it from the parties themselves; but whether they are letters, or whether they are not, these persons are answerable for them.

I cannot but have observed, from a smile on your countenances, that you conceive I meant to impute to my learned friend that he was the author of these letters; I meant no such thing; I should think it was very unworthy of me to say any thing that might

seem to justify such an imputation, after having made the observation I have made upon an unintentional misrepresentation of myself. I should be sorry to leave an impression on your minds that these papers had proceeded from the pen of my learned friend—I believe he would deem such publications unworthy of him—I believe he would not, like an assassin, attack people in the dark.—I believe, if ever he did publish a strong paper, he would put his name to it—I should hold him to be the basest coward, and most unworthy the rank he holds in society, if he could bring himself to the dastardly practice of feeding the columns of a newspaper with libels against lord Ellenborough, filling the honourable situation in which you so often see him acting for the public benefit. I thought it necessary to do my learned friend this justice, lest what I had said should have produced an effect contrary to what I had intended.

Gentlemen, there is another topic stated by my learned friend which I cannot think had much weight with you, namely, that the only question is, whether the author has detailed fairly what he had seen in other publications? This would be a receipt for all men to write libels just as they might think proper, by getting a third person to publish libels, and then to usher those libels a second time into the world with their comments upon them.

A great deal of eloquence has been applied by my learned friend (I wish it had been to a better cause), but a great deal has been applied to the consideration of these particular papers; and he has stated that in his judgment, none of them are to be considered in any respect as libellous on any of the parties to whom the matter contained in them is imputed; but that the object was only to charge them with improper conduct in the particular instances to which they relate. The writer says, that “So long as our courts of justice are open to animadversion, so long are the people of this country safe from the gigantic strides of despotism, and the encroachments of arbitrary power; and that impressed with this conviction, he feels it a positive right, as well as an imperious duty, to rouse the vigilant attention of his fellow-countrymen to the late proceedings in their courts of justice—to call publicly on his lordship for satisfactory explanation respecting a case that recently came under his cognizance, and was submitted to his jurisdiction—to examine freely, but respectfully, the force and validity of the doctrines which had been attributed, falsely he hoped, to his lordship, and clearly demonstrate their evil tendency and pernicious consequences to the public at large.” I want to know whether any thing can speak more directly and plainly than this does? which imputes to his lordship that he has disseminated principles dangerous in their tendency, and has urged to juries doc-

trines which are likely to be attended with pernicious consequences to the public at large? It is really the act of a child to be endeavouring to explain away the meaning of such libels.

My learned friend, after having observed upon the other parts of the libels, says, now what has all this to do with the conduct of judge Jeffries? Here, I think he did not deal fairly with me. He says, how could the attorney-general, in speaking of this libel, apply what had been said of judge Jeffries, as what was meant to be said of lord Ellenborough? He says, what has lord Ellenborough's conduct to do with judge Jeffries? And how could the most perverted mind suppose that the one had reference to the other? I agree with him, and I never said that it did; but when I found this uncharitable writer, in another part of the libel, pointing at judge Jeffries, and saying that he should have conceived himself to have been living in the reign of James the second, instead of the reign of George the third; and when I found him stating the conduct of judge Jeffries, and comparing the conduct of lord Ellenborough with it, I did take the liberty of saying, that his carrying us to the reign of James the second—that his carrying us by steps to the conduct of lord Ellenborough—that his saying that the conduct of lord Ellenborough put him in mind of James the second, because his lordship acted like judge Jeffries—I did then think that I was justified in considering it an aggravation of the libel, that the name of judge Jeffries had been so introduced; and I was justified, because you find that in a subsequent libel he refers to the conduct of judge Jeffries.

My learned friend says, that he is not inclined to dispute the excellence of the present judges; but that, if the seat of judgment is filled by less worthy persons, and such gentlemen as Mr. Hart and Mr. White are not permitted to arraign their conduct, the laws and constitution of the country will be put in danger. I believe, gentlemen, that there would be a great deal more danger by such persons being suffered to arraign the conduct of judges in the manner in which they have done. Permit me to make one observation with respect to the situation in which judges stand. It has been assumed by my learned friend, as it had been assumed by him who wrote these libels, that there is no appeal from the judges, but to the editor of a newspaper; that if a judge misconducted himself there could be none to call him to account, except the authors of such libels as these. Now with respect to the parties to proceedings in courts of justice, there is no instance in which they may not carry the discussion of causes affecting their property, their liberty, or their lives, to another tribunal—the law allows them upon all occasions, a motion for a new trial, or an appeal; or if they are discontented with the opinion of the judge, an

appeal to another tribunal, from that they may generally go to a higher, and ultimately to the House of Lords; there is, therefore, no danger that their rights or their liberties should suffer by the misconduct of judges, even though the writers of these newspapers should not be suffered to libel them for any doctrines they might utter unpalatable to themselves; nor can the judges betray their trust with impunity, for my learned friend knows perfectly well as I do, that if the conduct of the judge were such as would in the eye of morality condemn him, there is nothing that can in the eye of the law defend him; and if a judge were to misbehave himself, there is no doubt whatever that he might be impeached in parliament. If these passages were not as wicked in point of morality, as they are libellous in point of law, there is no doubt that lord Ellenborough might be impeached; therefore do not be led into the opinion that there is no other appeal for the protection of the lives and properties of the people against corrupt judgments, than to a libeller in a newspaper. The direct reverse is the fact—every individual has a right to carry his case to another tribunal, and every individual has a right to have the conduct of the judge questioned in the way I have stated:

Can it be necessary, gentlemen, that I should go through the various parts of these papers to show you that they are libellous? Can it be necessary that I should carry you again through all the observations my learned friend has chosen to make to you, and in which he says, the remarks in these publications are made innocently and in the course of free and fair discussion? Let me call your attention to this passage—he says, that his lordship has, on several occasions, announced a bias towards arbitrary power. To meet my learned friend on his own ground; he says, that this is only free discussion. Now I maintain, that to say of a British judge that he has a bias to arbitrary power, is to say that which imputes to him that he is an unconstitutional judge, and is as gross a libel as could be uttered of him.

What have we to do with the doctrines of Mr. Burke, or of any one who will in the one case support the power of the crown when he thinks it in danger from the attacks of the people, or who will, on the other hand, take the people's side to protect them from the attacks of the crown? How is even saying that of any man imputing to him an arbitrary bias? I know that to impute to the noble lord that he has a bias to arbitrary power, is to impute to him a disposition, which, if he were actuated by it, would render him unfit for the place he fills;—but to what extent has this been carried? The writer says, that he has been led to think that he was living in the reign of James the second, and not in the reign of George the third. Now, gentlemen, carry yourselves back to the reign of James the second, and you will find that every

thing that was most injurious to the constitution and particularly by the conduct of some of the judges, took place in that reign; and it is imputed to lord Ellenborough that he has pursued the same conduct as those judges in the reign of James the second, whose conduct and proceedings were eventually the cause of that king's abdicating his throne.

My learned friend says, that it is not because I can raise doubts with regard to the motives of the defendants, that you are therefore to find them guilty—I have raised no doubts. No man who has the intelligence of a human being can entertain the smallest doubt that the publications they have sent forth into the world are libels of the worst description. Can any man doubt that, for a judge of the present day to act as the judges in the reign of James the second acted, would not deservedly conduct him to the scaffold? then surely to impute to a judge of the present day, that he has so conducted himself that he puts the writer in mind of the reign of James the second, is to allege that against him, than which nothing can be more wicked, abominable, and libellous. It is holding out to the world, that the judge alluded to has acted upon doctrines which, if he applied to his administration of justice, would subject him to a parliamentary impeachment; and, gentlemen, if any doubt could remain that this writer meant to compare the conduct of lord Ellenborough with the conduct of judge Jeffries, notwithstanding the qualified expressions of "God forbid! that he should suppose he could so conduct himself"—I would ask you whether what follows does not completely prove to you that such was his meaning, and the inference he intended to be drawn? If that was not his intention, why should he have ended his second paper with stating, (putting his "God forbid" out of the question,) that the infamous Jeffries would sink to nothing in comparison with a character who could wear the ermined robe of justice only to conceal the dark workings of a black and malignant heart, and prostitute the venerable functions of a judge to ministerial tyranny and individual oppression. I want to know what this means;—has any meaning been attributed to it by the ingenious counsel for the defendants different from the meaning which I have attached to it?

Gentlemen, I was very much struck with the observation the learned counsel made, founded upon a speech of a late attorney-general, who stated that the accounts of and animadversions upon the proceedings of courts of justice, which appeared in a newspaper, were not to be considered in the same point of view as those elaborate compositions which were the fruits of the labours of men of superior literary genius, and more correct understanding. It seems to me that the learned counsel, in describing the mischiefs likely to ensue by publications of the nature he was adverting to compared with common news-

papers, was using an argument which went to show that this was precisely that sort of publication which was likely to produce a greater and more lasting effect upon the minds of the public who read it, and therefore that it was likely to be attended with more mischievous consequences—for you will observe that this is not a daily but a weekly paper—it is a paper which evidently was not written by one of the vulgar—these libels were written by a person who manifestly possessed the advantages of style—who was acquainted with the history of the country—who was particularly acquainted with the history of the reign of James the second—who knew what had been the conduct of judge Jeffries—who knew what had been the misdeeds of judge Jeffries—who knew how judge Jeffries had been treated, and who, therefore, was enabled to bring all his learning to bear in aid of that which was plainly his object, namely, to degrade and vilify lord Ellenborough, and to hold him up to public scorn and contempt. I find the writer not only possessing an energetic style, and a considerable degree of knowledge and learning, but also the most consummate art and literary contrivance—he brings things together artfully and powerfully—in one part he states that the conduct of lord Ellenborough reminds him of the reign of James the second, meaning to carry his readers to the conclusion, which it is afterwards his intention to draw, that the conduct of lord Ellenborough and judge Jeffries had been similar. It would have been too much if he had attempted to do this at first; but after he has prepared the minds of his readers for the conclusion he meant to draw, then in a subsequent paper he states what he says he cannot believe lord Ellenborough's conduct to have been—he states, that though he will not say so and so himself, yet, in order to make others draw the conclusion he wishes them to draw, he will state to them how lord Ellenborough ought to have acted, and that if he had not so acted, but had been such a monster as he pretends to think he was not, then, like judge Jeffries, he ought to be dragged from the seat of justice, and torn in pieces on the bench; and he hopes, provided the noble lord is that sort of character which he insinuates he is and only pretends he is not, that he shall be served precisely as judge Jeffries was served.

Gentlemen, this is not the ordinary composition which we find in a common newspaper—it is a composition which the book my learned friend has cited points out as the most dangerous, malignant, and venomous;—the most necessary to be prosecuted, and a publication that calls most loudly on those whose duty it is to bring the authors to justice.

There is another topic on which my learned friend has dwelt pretty much at large,—I mean the profession of this libeller—that he is a person possessed of no legal knowledge.

Upon that ground my learned friend has endeavoured to draw the inference that the author was a man offending from mere inadvertency—that he was a man possessing a simple, candid, innocent, well-meaning, moral mind—that he was merely hurried away by the laudable operation of an innocent and well-directed mind, intending only to tread in the path of virtue—and that the fervor of a mind so constituted, had led him to make these observations. I was sorry, at the moment, that I looked round while my learned friend was stating this, because I was afraid lest my doing so might have disturbed him in the course of his argument; but, to tell you the truth, I was impelled by a very natural curiosity to observe whether my learned friend had not a smile upon his countenance while he was saying what appeared to me only calculated to excite a sensation of mirth; for, really, to read the contents of these libels, and to suppose that they proceeded from that simplicity, innocence, good intention, and want of understanding of the law, which my learned friend supposed them to have proceeded from, is too absurd a proposition to gain credit with you, or with any one, for a single moment; and yet upon that principle, my learned friend most manfully defends these persons, for the libel upon the subject of Mr. Dickie's trial. He says that the writer saw no printed account of the case of *Aris v. Dickie*; he says there was no printed account of it:—he stated that the writer had only referred to the petition which was presented to the House of Commons. It occurred to him that it would naturally be asked, why the writer had not given himself the trouble to obtain his information from some other source?—Why he had not rather referred to the report of the trial?—And he said there was none in print. But, gentlemen, I have the report of the trial in my hand. My learned friend corrected himself afterwards, and said, though there might be such a report in print, it was unknown to his client.—I do not want him to get farther into the difficulty into which his argument had brought him—I will give him the credit of having truly asserted that there was no printed copy of the trial, though he might have seen, in my hand, the printed copy;—I will give him credit for not having perceived that which I held in my hand before him while he was addressing you—but I cannot give his client credit for any good motive in not instructing him that there was such a report in print, for you will not fail to recollect that his client was himself a printer. I think, therefore, that his client was of all men in the world the least likely to be ignorant of the publication of such a book, and especially as it was a book which was in fact the history of his own case; I therefore cannot believe that my learned friend would have said there never was a printed copy of this trial if his client had not told him so.

Gentlemen, I should think I was wasting your time if at this late hour of the day I were to go more into detail, in answer to the observations of my learned friend. I have before this day had occasion to observe, that there is for every trial but a certain portion of time allotted, and that if one counsel occupies more than is his share, another must take less. I think I have detained you long enough for all the purposes of justice—I think I have shown most satisfactorily, that these papers were published by the defendants, and that the tendency of them is to bring into contempt the administration of the law, and to vilify and degrade lord Ellenborough, by holding up to abhorrence and detestation the doctrines he has delivered; and also to libel the juries for pursuing the directions which they received from him. I think I have shown, beyond the possibility of doubt, that there is hardly any part of the case upon which you ought not to feel yourselves bound to convict the defendants. You must see that their object was to represent to the public that lord Ellenborough was, as a judge, acting in an infamous and corrupt manner, and that he acted in a way which justified a comparison between him and judge Jeffries. You have no ground left for that which in many cases is the province of a jury in the administration of justice,—you have no possible ground for hesitating as to what ought to be your verdict in this case.

I had almost forgotten the distinction my learned friend took between the printer and proprietor. He said that the printer might probably know nothing of the contents of these libels, even though the author of the libels, or proprietor of the paper was guilty. Gentlemen, if the printer were to prove that he had not read the libels, it would be no defence at all for him, for he is bound not to print and utter to the world that which has so mischievous a tendency as these publications evidently have: but in the present case there is no proof that the printer acted from ignorance. By the act of parliament, the printer and publisher are made liable for the contents of what they publish; and there can be no question in this case, that the defendants are the printers and publishers of these libels, and that they are answerable for all the consequences of having printed and published them. To say that the printer is not liable, because he does not read what he has published, is a doctrine which never was stated in a court of justice.

Gentlemen, I have been in the profession of the law ever since the year 1788, I have been acquainted with every case of libel that has occurred during that period, and I believe that it never entered into the mind of any man to say that a printer was not answerable, whether he had read the libel or not; for the charge against him is, that he printed a paper having a particular tendency, and if it has that tendency, he is clearly guilty. I

thought it necessary that this should not remain unnoticed, though I do not consider it as an argument which is entitled to any consideration.

I have no doubt that you have arrived at the conclusion which I came to before I instituted this prosecution, and that you will find the defendants guilty of the charge which I have thought it my duty to bring against them. I have not prosecuted them with asperity—I have prosecuted them from a sense only of my public duty—I thought it a duty imposed upon me to bring their conduct before a public tribunal of the country. The observations which I have made to-day have been called from me by a sense of my duty, and I am sure I have kept within the limits of decency and decorum—not suffering myself to indulge in any fanciful representations to you with respect to the tendency of these libels—not evincing towards these defendants any, the least sentiment of personal resentment—not referring to them bad motives, where it was possible to ascribe motives of a different description, but cautiously and studiously attributing to these libels that meaning and that intention which the information charges, and the terms of the libels themselves evidently import.

SUMMING-UP.

Mr. Justice Grose.—Gentlemen of the Jury; This information charges the two defendants, John Harriott Hart, and Henry White, with printing and publishing the libels you have heard read, with intent to bring into contempt the administration of the justice of the country, and to defame, vilify, and degrade the lord chief justice of the King's-bench, who is one of the highest officers employed in the administration of justice. It did not occur to me that it was possible this case could have lasted so long, for there are but two questions to be tried—First, the printing and publishing the libels; and, secondly, the intention with which they were published. One great advantage has arisen from the cause having lasted so long, which is, that you are perfectly acquainted with all the facts and circumstances, and have heard every thing respecting them fully stated and discussed.

Of the fact of printing and publishing can there be a doubt? The defendants, by their own act, have pointed themselves out as the printers and publishers. Then the only other point is, whether these libels were intended to bring into hatred and contempt the administration of justice, and lord Ellenborough who presides in this court as chief justice. In order to show that these are most wicked, gross, and abominable libels, it is only necessary to read, not all, but one or two of them; under this act of parliament I am to give you my opinion upon these publications, and I have no hesitation in saying, that any thing more libellous I never heard or read. In my opinion,

they are gross, scandalous, and abominable libels. If you are of the same opinion (and it is for you to consider that question), you will return your verdict accordingly; but if you are not, I will proceed and read the libels, with such comments as I may think necessary; although if, upon hearing them read, they do not at once strike you as in the highest degree slanderous, it will be impossible any thing I can say will convince you. Really, gentlemen, I think it would be throwing dust in your eyes, if I were to say that I entertained the least doubt upon the subject—if you have no doubt, you will return a verdict finding the defendants Guilty. If you have any doubt, I will proceed—

Foreman of the Jury.—I should hardly think it necessary to give your lordship the trouble.

The Jury consulted together a few minutes, and returned a verdict of GUILTY.

COURT OF KING'S-BENCH,

Wednesday, June 29th, 1808.

“*The KING against HART and WHITE.*”

“The defendants were the printer and proprietor of a newspaper called *The Independent Whig*, and were tried and convicted before Grose, J. at the sittings in London, upon the prosecution of the attorney-general, for printing and publishing in that paper a libel upon the lord-chief-justice of this court. The stat. 38 Geo. III, chap. 78, * for preventing the mischiefs arising from printing and publishing newspapers, &c. by persons not known, enacts, sect. 1st, That no person shall print or publish any newspaper until an affidavit, made and signed as after-mentioned, shall be delivered to the commissioners of stamps, &c. containing (by sect. 2nd) the names, &c. and places of abode of the intended printers, publishers, and proprietors of the newspaper, and the true description of the house wherein any such paper is intended to be printed, and likewise the title of such paper; which affidavit (by sect. 5th) shall be signed by the persons making it. By sects. 6th and 7th, penalties are given for the omission of a certain notice, and for printing, publishing, or vending any newspaper without making and delivering, &c. such affidavit. Then by sect. 9th, all such affidavits shall be filed and kept as the commissioners of stamps shall direct; and the same or certified copies thereof ‘shall in all proceedings civil and criminal touching any newspaper, which shall ‘be mentioned in any such affidavits, or touching any publication, matter, or thing contained in any such newspaper, be received ‘and admitted as *conclusive evidence of the*

* See the Debates on this Bill, 33 New Parl. Hist. 1415, 1482.

'truth of all such matters set forth in such affidavits as are hereby required to be therein set forth, against every person who shall have signed and sworn such affidavits,' &c. and 'also against every person who shall be therein mentioned to be a proprietor, printer, or publisher, &c. unless the contrary shall be satisfactorily proved.' The 10th sect. gives another penalty against the printers and publishers, omitting to state their names and places of abode, &c. And by sect. 11th 'it shall not be necessary, after any affidavit, &c. shall have been produced in evidence as aforesaid against the persons who signed and made such affidavit or are therein named, according to this act, and after a newspaper shall be produced in evidence intituled in the same manner as the newspaper mentioned in such affidavit is intituled, and wherein the names of the printer and publisher and the place of printing shall be the same as mentioned in such affidavit for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this act, to prove that the newspaper to which such trial relates was purchased at any house, &c. belonging to or occupied by the defendant or defendants, their servants, &c. or where he or they, &c. usually carry on the business of printing or publishing such paper, or where the same is usually sold.' And by sect. 17th, The printer and publisher of every newspaper shall, within six days after publication, deliver to the commissioners of stamps, &c. one of the papers, signed by such printer or publisher with his name and place of abode; which paper shall be kept by the commissioners, &c. and shall, on application, be produced in evidence in any proceeding, civil or criminal.

"At the trial the prosecutor gave in evidence the affidavit sworn by the defendants, with their hand-writing thereto, and delivered to the commissioners, containing all the particulars required by the act, and amongst the rest the description of the place where the newspaper was printed, which was in London. And an officer from the Stamp Office (which is not in London) produced a newspaper, without stating from whence it came, containing the libel in question; which newspaper answered the whole description contained in the affidavit, and stated at the foot of it, that it was printed at No. 33, Warwick-lane, London: and it was also proved that the defendants printing-house was at the same place.

"Clifford now moved for a new trial, on the ground, principally of the want of evidence that the defendants had published the libel in London. The 9th clause, he contended, only made the affidavit evidence of all matters set forth therein; and these, by the 2nd clause, are only the names, additions, descriptions, and places of abode of the

printers, publishers, and proprietors, the description of the house where the paper is intended to be printed, and the title of such paper. But this does not dispense with legal proof that the libel contained in any such paper has been published in the county where the trial is had: for a paper may be printed in one place, when the act of publication may be in another. And the defect of proof in this respect is not supplied by the 11th sect., which is confined to actions or informations for penalties given by the act, and cannot affect the construction of the 9th or general clause, which extends to 'all proceedings civil and criminal, touching any newspaper.' Then as to the 17th clause, the object was, that by comparing the newspaper so delivered to the commissioners with any other of the same impression, published in the county where the trial is had, the printing and publication might be brought home to the parties described in the Stamp-Office documents; but it could not be intended that a publication to the commissioners, under the express direction of the act, should be deemed a libellous and guilty publication, without any other evidence of publication in the same place. As in the case *de libellis famosis*,* and in *Lamb's case*,† the delivery of a libel to a magistrate for the purpose of investigation, being enjoined as a duty, was not considered as a criminal publication. And, besides, the newspaper was only produced by an officer from the Stamp-Office, without any proof how it came there, or from whom it was received.

"Lord Ellenborough, C. J. declined giving any opinion; and the rest of the Court were clearly satisfied that there was sufficient evidence not only of the publication, but of the publication in London. The reasons were most fully stated by

"Bayley, J. who said, As to the evidence of publication, the statute was passed, as the title of it states, for the purpose of 'preventing the mischiefs arising from printing and publishing newspapers by persons not known;' and it was meant to facilitate the proceedings, either civilly or criminally, against the several persons concerned in such publications. For this purpose the act requires an affidavit to be made by the printers, publishers, and proprietors, specifying their names and places of abode, a true description of the house where the paper is to be printed, and the title of the paper. And such affidavit is made conclusive of the several facts stated in it, as against the persons signing it; unless they show that they ceased to be the printers before the period of the particular publication complained of. Now suppose the act had stopped there, and it had been proved, as in this case, that a paper, such as is described in

5 Rep. 125. b.

9 Rep. 59.

the affidavit made and signed by these defendants, had been published, the affidavit is made conclusive evidence against them, that one of the defendants was the printer and publisher, and the other the proprietor of a paper so intitled, and that it was printed at the place therein described, which is within the city of London: that would have been *prima facie* evidence that the paper produced, tallying with that description, was published by them there; and would have called upon them to prove that it was a fabrication: and if it were, there could have been no difficulty in their making that proof. But the act goes further, and by the 11th sect. expressly enacts, that after such affidavit shall be produced in evidence, against the persons signing the same, &c., and after a newspaper shall be produced in evidence intitled in the same manner as the newspaper mentioned in such affidavit; and wherein the name of the printer and publisher, and place of printing, shall be the same, *it shall not be necessary* for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this act, to prove that the newspaper to which such trial relates was purchased at any house, &c. belonging to or occupied by the defendants or their servants, &c. or where they usually carry on the business of printing or publishing such paper, or where the same is usually sold. And I cannot consider, as the objection supposes, that all these descriptions of persons, namely, *plaintiff, informant, or prosecutor, or person seeking, &c.* apply to the same person seeking to recover penalties given by the act: but I take these words to apply to a *plaintiff* seeking to recover damages in an action for the civil injury sustained by him from the publication of a libel; to the *informant* in an information granted by this Court, or exhibited by the *attorney-general* for the same: to a *prosecutor*, prosecuting by indictment for the libel; or, lastly, to any *person* seeking to recover penalties under the act. Therefore, independent of the 11th sect., I should have thought that the evidence offered was *prima facie* evidence of the publication of the paper by the defendants in London; but, taking that section in aid, which is not confined to suits for recovering penalties, there can be no doubt that the necessity of further proof was superseded.

"RULE REFUSED."

10 East 94.

COURT OF KING'S-BENCH.

July 2nd, 1808.

The defendants being brought up for judgment, affidavits were read on their behalf, stating that neither of them was the author of any of the libels of which they had been found guilty, but that they were requested by the authors themselves to give them up as

such, they not desiring that the defendants should suffer on their account. It was accordingly declared that Mr. John Gale Jones, apothecary, was the author of the letter signed "JUNIUS," that William Augustus Miles, esq. was the author of another of the libels, and that the author of the letter signed "HUMANITAS" was unknown to the defendants.

Mr. *Holroyd* and Mr. *Clifford* addressed the Court in mitigation of punishment. They did not attempt to justify the libels which were the subject of the prosecution or the conduct of the defendants in giving circulation to them. They implored, however, the indulgence and clemency of the Court towards Mr. White, principally on the ground that from a lengthened residence in Africa, and other foreign climates, his health had been much impaired, and that from what had passed, the Court might be induced to consider that the disorder was not confined to his body alone. The learned counsel stated that the other defendant was merely the printer, and by no means accessory to any intentional offence.

The *Attorney-General*, in reply to all that had been advanced, produced several numbers of The Independent Whig subsequent to the libels, and even to the conviction, in order to show that the defendants so far from manifesting any contrition for what they had done, continued to publish libels as strong as those which were the subjects of prosecution. They persisted in their criminality almost to the very last moment; but, like other wicked and hardened offenders, one of the defendants delayed his repentance till the moment of punishment, when he betrayed a meanness and a cowardice equal to his guilt. He hoped the Court would prevent these abuses in future, by the exemplary punishment they should inflict on the present delinquents.

Mr. *Park* and Mr. *Abbott* followed on the same side, and contended, that this was not a case which called for any clemency. They entreated the Court not to permit the laws to be insulted with impunity merely because the insult had been directed against the persons of some of the judges themselves.

The sentence of the Court (which was passed by Mr. Justice Grose) for these libels, will be found in the following copy of the judgment on these same defendants for the other libels of which they had been convicted:

WHEREUPON all and singular the premises being seen and fully understood by the Court of our said lord the king now here—it is considered and adjudged by the said Court here, that they, the said John Harriott Hart and Henry White be taken, and so forth—AND HEREUPON the sheriffs of London are com-

manded that they take the said John Harriott Hart and Henry White, if they shall be found in their bailiwick, and them safely keep, so that they may have their bodies before our said lord the king at Westminster, on Saturday next after fifteen days of the Holy Trinity, to satisfy our said lord the king concerning their redemption, by reason of the premises aforesaid, whereof they are convicted. The same day is given as well to the said sir Vicary Gibbs, who, for our said lord the king in this behalf prosecuteth, as to the said John Harriott Hart and Henry White. On which said Saturday next after fifteen days of the Holy Trinity, in this same term, before our said lord the king, at Westminster, come as well the said sir Vicary Gibbs who for our said lord the king in this behalf prosecuteth, as the said John Harriott Hart and Henry White in their proper persons. WHEREUPON all and singular the premises being seen and fully understood by the Court of our said lord the king now here, and mature deliberation had thereupon, and the said John Harriott Hart and Henry White having also been convicted of certain other trespasses, contempts, and misdemeanors, in printing and publishing certain other scandalous libels concerning other trials and verdicts therein mentioned, and the conduct of the right hon. Edward lord Ellenborough, as chief justice of the Court here, and a peer and lord of parliament, for which they have this day been sentenced, and ordered by the consideration and judgment of the said Court here, to be imprisoned; to wit, the said John Harriott Hart to be imprisoned in the gaol of our said lord the king, at Gloucester, in and for the county of Gloucester, for the term of eighteen calendar months, and the said Henry White to be imprisoned in the gaol of our said lord the king at Dorchester, in and for the county of Dorset, for the term of eighteen calendar months.

IT IS NOW ADJUDGED AND ORDERED by the said Court here, that he, the said John Harriott Hart, for his trespasses contempts and misdemeanors first above mentioned, be further imprisoned in the aforesaid gaol of Gloucester for the term of eighteen Calendar months, to be computed from and after the determination of his aforesaid imprisonment, for printing and publishing the said other scandalous libels concerning the other trials and verdicts therein mentioned, and the conduct of the said Edward lord Ellenborough. And that he, the said John Harriott Hart, do give security for his good behaviour for the space of five years, to be computed from and after

the expiration of the last-mentioned eighteen calendar months, to be computed as aforesaid, to wit, himself, the said John Harriott Hart, in the sum of 500*l.*, with two sufficient sureties in 250*l.* each, and that the said Henry White for his trespasses, contempts, and misdemeanors first above mentioned, be further imprisoned in the said gaol at Dorchester, for the term of eighteen calendar months, to be computed from and after the determination of his aforesaid imprisonment, for printing and publishing the said five scandalous libels concerning the other trials and verdicts therein mentioned, and the conduct of the said Edward lord Ellenborough; and that he, the said Henry White, do give security for his good behaviour for the space of five years, to be computed from and after the expiration of the said last-mentioned eighteen calendar months, to be computed as aforesaid, to wit, himself, the said Henry White, in the sum of 500*l.*, with two sufficient sureties in 250*l.* each. And the said John Harriott Hart and Henry White are now committed to the custody of the marshal of the marshalsea of the Court here. AND it is ORDERED by the said Court here, that the said marshal, or his deputy, do deliver the said John Harriott Hart into the custody of the keeper of the said gaol at Gloucester, to be by him kept in safe custody, in execution of this judgment, and until he shall have given such security as aforesaid: And that the said marshal, or his deputy, do deliver the said Henry White into the custody of the keeper of the said gaol at Dorchester, to be by him kept in safe custody in execution of this judgment, and until he shall have given such security as aforesaid.

[IN THE HOUSE OF LORDS.]

John Harriott Hart and Henry White,
Plaintiffs in Error; and our Sovereign
Lord the King, Defendant in Error.]

"This judgment was soon after carried into effect, and the said John Harriott Hart, on the 6th day of July, 1808, was conveyed to Gloucester gaol; and on the same day, the said Henry White was conveyed to the gaol of Dorchester.

"On this judgment and sentence of the Court of King's-bench, the plaintiffs in error, on the 10th day of November, 1808, sued out a writ of error returnable in parliament, and assigned general errors, and also special errors against the same, in the words following (that is to say) that in the record and proceedings aforesaid, there is manifest error in this (that is to say), that by the record and proceedings aforesaid, it appears that judgment

is therein given as follows (that is to say—the assignment then set forth the judgment and sentence of the Court of King's-bench in the same words as they are above set forth, and continued thus)—WHEREAS by the laws and customs of this realm, no such judgment legally could be given, or ought to be passed on the said John Harriott Hart and Henry White, or either of them. AND WHEREAS by the laws and customs of this realm the said John Harriott Hart and Henry White ought not to be, nor could either of them be legally sentenced to be imprisoned respectively in the said gaol, in and for the said county of Gloucester, and in the said gaol, in and for the said county of Dorset, in manner aforesaid: AND WHEREAS in and by the record and proceedings aforesaid, it appears, that the said Court of our said lord the king, before the king himself, before and at the time when the said John Harriott Hart and Henry White received such sentence as aforesaid, sat and was holden at Westminster, in the said county of Middlesex, and not in the said county of Gloucester, or in the said county of Dorset. AND WHEREAS it doth not appear by the said record and judgment, or in any other manner, that the said gaols in and for the said counties of Gloucester and Dorset, respectively were, or one or either of them was, or is, before, or at the time of passing of the said sentence, or now, the prison of the said court of our said lord the king, before the king himself in this behalf. AND WHEREAS the *venue* in the said information, whereon the said John Harriott Hart and Henry White have been and are convicted as aforesaid, was and is laid in the city of London, and not in the counties of Gloucester and Dorset or either of them, AND THEREFORE there is no judgment to warrant the said sentence, on the said John Harriott Hart and Henry White, or either of them. AND WHEREAS the said John Harriott Hart and Henry White are, by the said judgment, sentenced to give such security for their good behaviour respectively, for the space of five years after the expiration of their said respective imprisonment as above is mentioned. AND for that the said judgment, sentence, and punishment, are cruel, unusual, and contrary to law: AND for that the said judgment, that the said John Harriott Hart and Henry White, after the determination of their aforesaid imprisonment, shall respectively give such security for their good behaviour as aforesaid, tends to their and each of their destruction and perpetual imprisonment, is excessive and contrary to law, and to the rights and liberties of the subject: AND for that in either respects the said judgment is improper, insufficient, and illegal.

“Therefore the said John Harriott Hart and Henry White respectively pray, that the said judgment, for the errors aforesaid, may be reversed and annulled, and that they, the said John Harriott Hart and Henry White, may respectively be restored to all they or either

of them have lost thereby, and may be discharged from their said imprisonment.

“HENRY CLIFFORD.”*

“The Attorney-General, on behalf of his majesty, has made the usual rejoinder, In nullo est erratum; and it is humbly submitted to your lordships, that the said judgment ought to be affirmed; for the following, among other reasons, to be urged at your lordships bar:

“REASONS.

“I. That all the gaols in England are his majesty's prisons; and that the Court of King's-bench hath supreme criminal jurisdiction throughout England, and is not confined by law to make use of the prison which is exclusively its own, but may commit offenders to any prison in England which may be thought most proper.

“II. That in the exercise of this jurisdiction, it hath been the practice of the said Court, in its judgments against offenders, to direct such judgments to be executed in any county in England as the said Court hath in its discretion seen fit; and such sentences have been accordingly carried into execution without any question made of their legality.

“III. That all courts of criminal jurisdiction have authority by law, and are accustomed in their judgments in cases of misdemeanor, to require offenders to give security for their good behaviour where the same appears necessary; and that when such security is required, it is the legal and usual course for the Court to order the offenders to be imprisoned until such security shall be given.

“IV. That the Court by whom judgment is pronounced in cases of misdemeanor, being accurately informed of all the circumstances connected with the case, is thereby enabled to apportion the punishment to the demands of justice and the security of the public. The law has therefore entrusted to the sound discretion of the Court, to order not only for what term such offenders shall be imprisoned by way of punishment, but also what shall be the nature, amount, and duration of the security to be given by them; and the exercise of this discretion cannot be questioned upon a writ of error, unless it can be shown that the judgment is either in its nature or extent contrary to some known rule of law. That there is no ground for complaining of this judgment as illegal, nor, if the question could be entered into, would there be any for suggesting that it is cruel, unusual, or excessive, but on the contrary, it would appear to be well warranted by the offence of which the plaintiffs in error have been convicted.

“V. GIBBS.

“THOMAS PLUMER.”†

* From the printed Case of the Plaintiffs in Error.

† From the printed Case of His Majesty.

The only account that I have seen of the Arguments on the Writ of Error in this case, is contained in Hansard's Parliamentary Debates, Vol. 14, pp. 583, 598. It is as follows : *

HOUSE OF LORDS,

Tuesday, May 16, 1809.

John Harriott Hart, printer, and Henry White, sole proprietor, of a Sunday newspaper, called the "*Independent Whig*," Plaintiffs in Error, v. The King, Defendant in Error.—Pursuant to the order of the day, the counsel in this cause, Mr. Clifford, on the part of the Plaintiffs, and Mr. Attorney and Mr. Solicitor-general, on the part of the Crown, appeared at the bar about three o'clock, when

Mr. Clifford addressed their lordships as follows : " My Lords ; In this case, I have the honour to appear before you on the part of the plaintiffs in error. The question now under your lordships consideration is of so much importance as necessarily to command attention. I should, therefore, hold it a waste of your lordships time, if I made any prefatory remarks upon it. My lords, this is a writ of error upon a judgment given by his majesty's court of King's-bench, on an information filed by the attorney-general against the plaintiffs in error, John Harriott Hart, and Henry White for a libel. The venue was laid in the city of London, where the trial also took place. The plaintiffs were afterwards brought to the bar of the court of king's-bench, where judgment was passed upon them [The learned counsel here stated the sentences passed upon the plaintiffs in error—*Vide supra*.] Upon this judgment, my lords, this writ of error is brought before you, and I hope to convince your lordships that it is an erroneous judgment, and therefore ought, in justice, to be reversed and annulled by this high and honourable court. This judgment, my lords, admits of two great and leading grounds of objection : the first, that the gaols of Dorchester and of Gloucester, in which the plaintiffs are imprisoned under the judgment of the Court, are neither of them the immediate prisons of the court, nor the gaols of the counties where the offences were committed, nor was the court of King's-bench, at the time of passing sentence, sitting in either of these counties ; and secondly, I contend that the security required from the plaintiffs is illegal and excessive, and, therefore, should not be required of the plaintiffs. Upon this assignment of errors, the attorney-general, on behalf of the crown, pleaded generally, that neither in the record and proceedings, nor in the judgment, was there any error. The question now for your

lordships consideration is, whether on these two points, or either of them, the doctrine asserted and upheld by the attorney-general, or the view of the case which I shall have the honour to submit to your lordships, is the best founded in the law and constitution of the country ? There are some points connected with a general view of this case, which I may not think right to urge in the first instance ; but upon which, I may, according to what shall fall from the counsel for the crown, touch in my reply. In discussing this case, no want of candor shall be fairly attributed to me. I admit, then, that all the gaols in the kingdom are his majesty's ; that the court of King's-bench is supreme in criminal jurisdiction throughout England ; that it may commit offenders to any prison it thinks proper, in case the Court, at the time of passing such sentence, should sit in the county to which such prison belongs. I admit every one of these points. My lords, the principle laid down by the attorney-general in reference to this part of the case, is very general ; to the length I have stated, I go with him, but by no means to the full extent. The courts of justice, and prisons, are held by the law and constitution of the realm, to be the king's, for special and particular purposes. I flatter myself, I shall be able to convince your lordships, that the legal purpose for which the gaols were allotted for confinement of offenders, was the imprisonment of those who were guilty of offences in the body of the counties in which such gaols were situated. In advancing this, I do not mean to contend, that it would be illegal to have sent the plaintiffs to any gaol in the county of Middlesex, for there the sentence was passed ; nor to any gaol in the city of London, because there the offence was committed. I request your lordships to bear in mind the distinctions which I admit, that the Court may send persons either to gaols in the counties where the offences had been committed, or in those where the Court sat at the time of passing sentence. In former times, when the power of imprisoning individuals was exercised by other persons as well as those constituting his majesty's courts, these persons, with a view to the extortion of money, instead of sending the objects of their power to the county-gaols, used to send them to their own castles. These were chiefly justices of the peace, and by an act of the 5th of Henry 4th, chap. 10, that power was taken away, and it was enacted that individuals should be imprisoned no where but in the gaols. Now, my lords, I know full well that taking away the jurisdiction from justices of the peace did not take it away from the court of King's-bench ; but it is rather too much to contend, that, if justices of the peace had usurped this species of jurisdiction, that, on their being deprived of this usurped jurisdiction, it was necessarily transferred to the court of King's-bench.

* This report is evidently very loosely taken ; in transcribing it, I have introduced some verbal corrections, but am not responsible for its general accuracy.

The learned counsel then referred to a case occurring in the 11th of Edward 4th. Having stated the circumstances, he proceeded, "If at that time it was held to be the undoubted right of the Court of King's-bench to commit to any gaol it thought proper, because all were his majesty's prisons, there would hardly have existed any thought of an investigation to what particular prisons those persons should be sent! What I am now about to state is extremely strong; it respects the question whether the sheriffs of England be officers of that court." [In illustration of this, he referred to a case occurring in the 21st of Edward 4th, the appeal against Winkfield, as reported by Brooke, in which it was held that the sheriff of Middlesex was not the immediate officer of the Court, except for things done in that county.] "This latitude of discretion in the Court of King's-bench was doubted; but it appears that it could not legally exercise such a power, because the sheriff is not the officer of the Court, except for things done in his county.—If this be so, in what possible way can the sheriffs of Dorset or Gloucester be held as officers of the court, or have persons committed in the way before us, legally transmitted to their charge? This quotation from Brooke is given not only as he found it to be decided, but with his observations and additional remarks. Having stated these cases from rather remote periods of our history, I come to one of comparatively modern date, and which bears materially upon the subject. In the 34th of Elizabeth, complaints had been made that the Star-chamber and privy-council had acted in the most arbitrary manner, especially with respect to the imprisonment of individuals, some of whom were sent to distant gaols. Writs of Habeas-Corpus were issued in consequence, and the persons were liberated. Disputes arising between the courts and the Star-chamber, a reference was made to the twelve judges, who delivered their opinions in writing, upon the points referred to them, in which statements it was observed that some of the persons so delivered had been committed to prisons in secret places! It was acknowledged by those judges, that individuals were confined in secret prisons, and not in ordinary places. Every prison at a distance may be regarded as a secret prison, at least from the families of the unhappy persons so immured, and this emphatically is the case of the plaintiffs confined in the gaols of Dorchester and Gloucester!" [Having described the functions and powers of the court of Star-chamber as regulated by the stat. 3, Hen. 7, c. 1, the learned counsel proceeded,] "But in what way, my lords, was this court authorized to punish? Not according to any new-fangled discretion of its own—it was restricted to the pronouncing of such judgments as were warranted by the common law of the realm. Afterwards when the abolition of this tribunal took place, 'all that was good and salutary of the jurisdiction of the Court of

'Star-chamber,' in the language of Mr. Justice Blackstone, 'reverted to the court of King's-bench,' but no farther was it vested with those powers of imprisonment, so stigmatized in the Court of Star-chamber. I shall now proceed to the reign of Charles the First, which furnishes us with some memorable cases, upon which I shall beg leave to trouble your lordships: I mean those of Mr. Prynne, Mr. Burton, and Dr. Bastwick. The sentence which was passed upon them by the Court of Star-chamber, took place in the year 1637—they were doomed to stand in the pillory, sentenced to a considerable fine, and to be committed to close custody to the gaols of Launceston, Lancaster, and Carnarvon: they were sentenced to stand in the pillory in Palace-yard, Westminster, to a fine of 5,000*l.* and to incarceration in the remote prisons I have mentioned.* The case is so far precisely parallel with that for which I have the honour to stand before your lordships. My lords, I can entertain little hope that any thing stated by a person while undergoing such a sentence, can have much weight with the deliberate wisdom of your lordships; but the sentiments uttered by Dr. Bastwick, under the circumstances, deserve some consideration. In order to excite sympathy and compassion, he addressed the populace, and particularly dwelt on the measure of sending the sufferers to remote places of confinement as new, unjust, illegal, and oppressive. It is not likely that a man in such circumstances should have so openly asserted a direct falsehood, which must have been apparent at the time, and rather have hurt than benefited his cause; but what he advanced was never contradicted, and the practice complained of was conceived by the people, at the time, as a novelty, and contrary to law. Petitions were afterwards presented to the House of Commons, on behalf of Mr. Prynne, Mr. Burton, and Dr. Bastwick. The petition of Mr. Prynne particularly complained of the hardships inflicted upon him and his fellow-sufferers, and in the prayer of his petition he requested that the House may take their grievances into its most serious consideration, in order that such novel practices may not become precedents to the prejudices of others. We all know, my lords, that Mr. Prynne was one of the best lawyers that ever appeared in Westminster-hall, and that such a person was not likely to be ignorant of the laws of his country, or so foolish as to state on such an occasion, to parliament, that the punishment they had undergone, by being sent to a place of confinement out of the county in which they were sentenced, was illegal and a grievance. As soon as those petitions were read, my lords, they were referred to a committee to consider and to report upon the several abuses therein stated, as committed by the Court of Star-chamber, or any officer under

* 3 Howell's State Trials, 725.

its authority. From these proceedings we may fairly infer that the conduct complained of was an abuse of the authority of the Court, and contrary to law. It was afterwards resolved, that such practices were against the law, injurious to the liberty of the subject, and ought to be prevented. A distinct resolution declared that the sentence of the privy council for sending individuals to distant prisons for confinement, was illegal. Mr. Prynne was ordered to be restored to his degree in the University of Oxford, and to his chambers among the society of Lincoln's-inn. It was ordered by the House of Commons, in March 1640, that a committee should be appointed to consider of the Court of Star-chamber, and to prepare a bill concerning the same. In May 1641, a bill was passed in the Commons for taking away the power of the Star-chamber. This act is now on the statute-book as the 16th Charles 1st, chap. 10. The bill underwent much consideration in the Lords, as appeared by their lordships' Journal, and after some difficulty it was passed. The illegal practices of the court, and the grievances occasioned by them, were duly noticed, particularly in the preamble of the act, which prescribed that from and after the 1st of August 1641, the Court of Star-chamber should be actually dissolved and abolished. It appeared that at first there was no intention to abolish the Star-chamber, and the idea was not entertained until after the report of the committee. Now, my lords, what was the report of that committee? I should first observe, that the committee itself originated in the petitions I have adverted to, which particularly dwelt on the illegality and grievance of the imprisonment in distant gaols. The committee only reported upon the abuses complained of in these petitions. Upon hearing these, the House of Commons directed its committee to prepare the bill, and to consider at the same time of the enormous sentences pronounced by the Star-chamber. The concluding clause of this memorable bill enacts, that no court in future shall have the like jurisdiction as that court was vested with or had used to exercise. It appears, my lords, from the time of presenting the petitions I have mentioned until the bill received the royal assent, that the only abuses which led to the destruction of the Star-chamber, were the abuses complained of in those petitions, the prominent point in which was the illegality and grievance of imprisonment in distant gaols; and I can confidently advance that the Court of King's-bench does not, legally, possess a shadow of this power, unless his majesty's attorney-general produces some modern statute which invests them with that power. Nothing short of such an authority can, legally, confer the power of inflicting such a punishment, and I must decidedly protest against the idea that any precedent of modern date can vest such an authority in the court of King's-bench; and I do humbly, but confi-

dently contend, my lords, that the Court in question possesses no such legal power, unless the attorney-general can show a statute which gives them that investiture. In the year 1642, my lords, it is to be found, at the time that disputes had arisen between the king and the parliament, that the latter being at a loss for money, when it had passed an ordinance for the raising a large body of troops for its service, and for the purpose of enabling them to do so, an ordinance was passed for the payment to the state of a twentieth part of the property of individuals, and towards the enforcing of which the process of distress was authorized. It was farther ordained by the parliament, with respect to the raising of this money, that defaulters, or persons refusing to answer, were to be brought before the House of Commons, which should have the power of imprisoning, in such case, at its discretion, those persons, in such places in the kingdom as it should think fit, and to direct, that the families of such persons should have no longer any intercourse with them! From this proceeding, we may clearly infer that no such power as that of consigning offenders to distant places of imprisonment, was held to exist in the court of King's-bench; if such an authority resided in that tribunal, it would hardly be deemed necessary to pass an ordinance. This remarkable measure was afterwards commented upon on the part of the king himself, when it was properly observed, that the power of imprisoning his majesty's subjects in places distant from the scene of their offences, was a latitude of judgment which no court of law could challenge to itself. This, my lords, was the construction put upon this assumed power, in opposition to the parliament, by king Charles himself. For the illegality of such a practice, I ask, my lords, can there be a stronger authority? The allegation on the part of the king, was, that the sending persons to confinement in distant places, was a latitude of judgment which no court could challenge to itself! This assertion of king Charles is equally clear and comprehensive. In the next reign, the House of Commons, by an act passed, seems so clearly to have acknowledged, that no such power as sending persons to distant places of confinement could legally exist, that no mention whatever of such mode of imprisonment was made therein; but, a clause was inserted in the bill to prevent illegal imprisonment in parts beyond the seas. In the 36th of the same reign, viz. in 1684, a clergyman of the name of Rosewell was indicted for preaching a treasonable sermon in the county of Surrey. I know not what doubts could exist with respect to the place of confinement, as the prison of the court is situated within that very county; but, from this case it appears, though the attorney-general of that day was known to be a considerable lawyer, that doubts were entertained in that respect, but

those doubts were removed by a remarkable assertion of the then clerk of the crown, who said, that the gate-house might be the prison, as the Court then sat in the county of Middlesex: it follows, by necessary inference, that the Court could not be justified in sending persons for confinement out of the county in which the Courts sat; the words of the clerk of the crown were held to be decisive, as to the point.* My lords, I have next to request your attention to an instance which occurred in the reign of James 2nd. It is the case of the King against Beale, of which it is stated, that Mr. Attorney-general moved that the Court would order execution against a soldier for an offence which was committed in a distant county, and for which the government judged it expedient that he should be exemplarily punished. A question arose, whether the Court of King's-bench had legally the power to do what the attorney-general moved for? The lord-chief-justice, in substance, said, that the motion was irregular, as the prisoner was never before the Court. In consequence of this, the prisoner was, under a writ of Habeas Corpus, brought before the Court; upon which occasion, the case states, that it was laid down, that the thing required could not be done—that it may be done in Middlesex, by the prerogative of the judges who then sat in that county. From this decision of the Court itself, my lords, it incontestibly appears, that the Court of King's-bench cannot order such things out of the county where the offence was committed, or where it is actually sitting at the time. The report to which I refer goes on to say, that it being judged of some importance at the time, to make an example of the soldier in question, the lord-chief-justice was removed to another court: two of the judges forthwith received their quietus, and the seats filled with judges of a more pliant character. The soldier was again brought up, and his execution ordered by the new chief-justice, as desired by the government. Thus, we see, my lords, that the Court of King's-bench, even at that time, as legally and regularly constituted, declared, that the act moved for by the king's attorney-general was contrary to law, in the infliction of such punishments out of the county where the offence was committed, or of that where the Court sat for the time. The same court so soon after was composed of judges so very different in point of character from their immediate predecessors, who, to the loss of their offices, protested against shedding the blood of their fellow subjects contrary to law. Does this invalidate the legal and constitutional judgment made by the Court in the freedom of decision? That such would be the conduct of the newly-formed court was well known to those, who, for the purpose, placed the new judges in their situations.

There were several cases of a similar nature in the same reign. But, my lords, the case to which I shall next call your attention, did not occur in such times as those to which I have just adverted: it took place in, perhaps, the best times this country ever knew, I mean, my lords, the reign of king George 1st. The case to which I refer is reported in the 6th volume of the State Trials, namely, that of Christopher Layer, which occurred in the year 1723. He was tried at the bar of the court of King's-bench, and executed in Middlesex. This was on the express motion of the attorney-general, who said there were several precedents for the execution of offenders in counties different from the scene of their offences: the cases of lord Audley and Fitzpatrick were mentioned as instances; but, my lords, from what transpired on this well-known trial, it appeared, that so late as the year 1723, the attorney-general entertained doubts, whether the Court had, legally, the power of ordering executions any where but where the offences were committed?—These are the only cases of this kind upon which I shall trouble your lordships; but I am borne out in the principle I have laid down, by authorities in matters of a different kind. In 1 Hale's Pleas of the Crown, 462, a case is referred to of a man who was tried for murder, in the county of Kent;—he was found guilty; and in a note, it is said, the award was for the marshal to do execution, the prisoner having been removed to the custody of the marshal, as the immediate officer of the court. A respectable legal authority tells us, that where judgment of death is given in the Court of King's-bench, the execution is to be by the marshal of the court; and by another it is stated, that execution is not to be awarded in a different county, except it be where the Court should then sit. My lords, having gone through, or referred to, these different cases, it seems to me, that the conclusion to be drawn is, that in every case where imprisonment has taken place out of the county where the offences have been committed, and in every case where executions have taken place out of the county—in every one of those cases some excuse is offered, some doubts expressed, and some reasons given why such punishments should not take place in the counties where the offences had been committed. On a memorable occasion, of no very distant occurrence, when an impeachment was preferred at the bar of your lordships house, it was well said, that “innovations in law had crept in like heresies in religion, slowly and silently, leaving, in the end, nothing but the false and corrupt semblance of each!”—In the variety of cases to which I have solicited the attention of your lordships, the legality of the mode of punishment complained of by the plaintiffs, is either doubted, denied, or

* 10 How. St. Tr. 154.

• 16 Howell's State Trials, 321.

controverted; and it is shown that for ordering that species of imprisonment, the court of Star-chamber was actually abolished. My lords, I have referred to or laid before you various cases and statutes for your serious consideration as to their tendency and effect. I do not feel it necessary at present to enter into a general argument upon them. It is sufficient for me at present to state the general grounds upon which I defend those for whom I have the honour to appear before you. I am the less solicitous about entering into such a line of argument at present, because it will depend upon what falls from the learned counsel, how far I shall have to trouble your lordships in that respect. I understand that it is meant, on the other side, to quote some precedents. On this topic I shall generally refer to the sentiments of a great constitutional lawyer. Upon the well-known occasion of the question of general warrants, and orders issued by secretaries of state for the breaking open of chests, in order to search for papers; and on the action brought by Mr. Wilkes against the under secretary of state, lord Camden, in summing-up to the jury, said, that all the precedents since the Revolution afforded no justification for a practice in itself illegal, and against the principles of the constitution.*—And in this doctrine, my lords, that great and venerable lawyer was certainly well-founded!—Here we have the authority of lord Camden, and his opinion of the value and effect of official precedents. In the case which subsequently occurred, of the action brought against the king's messengers, for breaking open trunks to search for papers,† lord Camden maintained and illustrated the same sound, legal, and constitutional principles; he deprecated the practice of recurring to modern precedent for justification, which never could militate against clear and established law; he admitted the authorities founded upon decisions of the twelve judges, but the twelve judges, he said, could not make law! I am not ignorant, my lords, of the cases which may be adduced of modern or recent occurrence to countenance the illegal practices complained of. Among these are the cases of Mr. Redhead Yorke‡ and Mr. Gilbert Wakefield;§ the one for an offence committed in Yorkshire, and the other for an offence in Middlesex, were confined in distant prisons; that of Mr. Kydd Wake too was of a similar description. It does not follow, my lords, that because those persons never complained to your lordships, their sentences were not illegal. It was most likely, as lord Camden said upon a particular occasion, that their poverty had prevented their contending against the power of the court.|| We know,

my lords, that it is not every person who has the means of bringing a writ of error before the high court of parliament.—Having now gone through the first part of the case, I shall trouble your lordships with a few words on the second part of it: I mean, that part of the sentence which requires the plaintiffs to give security for their good behaviour for five years after their respective imprisonments. My objections to this part of the sentences are, their being excessive, unusual, and therefore contrary to law; and, viewing the whole of the case of the plaintiffs, I am rather at a loss to tell why this security is to be given, or what is meant by it. Your lordships will observe that the sentence is for the publication of what is said to be a libel, and a libel upon a court of justice, but the information does not state whether what was advanced be true or false! Is it as a security for good behaviour in every case? Would the security be forfeited by writing a true and faithful account of, and making true and just observations on, the conduct of courts of justice? No one can tell whether the information proceeds on the ground of every thing advanced being true, or every thing advanced being false. The parties will necessarily be bewildered if any persons, in such a state of uncertainty, should be bold enough to come forward as their securities. It must be known—or are the parties to give up their newspapers, or never to write a line respecting courts of justice, because if either true or false, they may be called upon for their security, if it cannot be exactly stated what will amount to a forfeiture of the recognizance. I humbly contend that even in this view of the case, this part of the sentence is illegal, unconstitutional, and void.—In another point of view, my lords, this part of the sentence is equally liable to uncertainty and doubt. Suppose that they cannot get the security required, are they to undergo five years imprisonment in addition, and then to be liberated? No such thing; as the sentence stands at present, they may be imprisoned to the end of their lives, and in places far distant from their families, their friends, and their connections! Such a judgment, my lords, is, I contend, unusual, oppressive, contrary to the Bill of Rights, and therefore contrary to law! Before I conclude, I beg leave shortly to recapitulate what I have submitted to your lordships consideration. I have stated the conduct of courts of law in former times, with respect to cases similar to that before us, and the principles which governed that conduct. I have stated a case from which the court of King's-bench doubted, or decided negatively, as to its own powers with respect to confining persons in distant gaols. I have shown that upon all occasions there have been some particular grounds or special reasons assigned, for a departure from what was known to be a general principle of law, in those instances where such modes of punishment were awarded by the Courts. Even

* 19 How. St. Tr. 1167.

† 19 How. St. Tr. 1044.

‡ 4 How. Mod. St. Tr. 1003.

§ 6 How. Mod. St. Tr. 679.

|| 19 How. St. Tr. 1068.

so late as the year 1723, doubts were entertained by the judges and lawyers upon these points; I have shown the difficulties under which king James the Second struggled, in order to carry a sentence into execution according to his wish, so much that he was obliged to displace the judges of the court, and appoint new ones, creatures of his own! In the reign of king Charles the First, that prince himself protested against the arbitrary and unconstitutional power assumed by parliament in punishing his subjects in the way now complained of. Such, my lords, were the ideas which so long prevailed in the country upon these points; such was the conduct of the judges, even in the reigns of the Stuarts, when, if it was found impossible to give such a mortal stab to the liberties of the people, I am sure that under the influence of that family which came to restore and to secure to us those blessings of which the Stuarts in vain attempted to rob us; under the reign of the monarch who now adorns the throne, whom this House and the country look up to as their last and best guidance and support; that upon all such occasions this high and honourable court will oppose the assumption of a power contrary to law, and hostile to the best principles of the constitution.

Mr. *Attorney General*.—I have now to trouble your lordships, and to assure you that the judgment, in support of which I appear, does not deserve the hard names bestowed upon it, such as were never before used in a court of justice—of cruel, oppressive, and unusual. In good truth, my lords, I believe there could be no reason for bestowing these epithets upon the judgment, except the knowledge that it was impossible for your lordships to enter into the considerations upon which the Court pronounced that judgment, and measured the punishment it should inflict; because the learned gentleman is wise enough to know, that it was not merely from the face of the record, but from the consideration of extrinsic circumstances, that the Court measured the judgment it thought proper to pronounce. That imprisonment is a species of punishment for libellers, and that to require security for their good behaviour after their imprisonment is a very usual practice, must be so well known to the learned gentleman, that I shall not condescend to show either a principle or a case for the purpose of supporting that doctrine. In much of what has fallen from the learned gentleman, I shall not follow him, because a great part of his statements carry with them their own refutation. But in answer to such of his arguments as have any shadow of bearing upon the question before your lordships, I contend that the court of King's-bench has unlimited jurisdiction throughout the whole kingdom: that his majesty has this jurisdiction through his first criminal court, the King's-bench. No matter whether it sits in one part of the realm or another, it pos-

sesses supreme jurisdiction through the whole. In support of these positions, as the genuine and established law of the land, I could adduce numberless cases; that of the King v. White,* is all I shall trouble your lordships with. The case was that of a constable at Scarborough who was attached by order of the court of King's-bench for destroying a warrant of the lord chief justice, to be executed in that quarter; this alone would show, that the court in question possesses a criminal jurisdiction throughout the whole country. The learned gentleman does not dispute that all the gaols in the kingdom are the gaols of the king: but he says, they are to be used in a certain qualified way; he denies the right of the king to send persons to any gaol not in the county in which the offence is committed, or where the court is not present. I have in my hand, my lords, what I believe you will agree with me to be some authority on those points, Mr. Sergeant Hawkins's Pleas of the Crown. Speaking of the court of King's-bench, he says, 'So high a trust doth the law repose in the justice and integrity of this court, as generally to leave it to the discretion of the judges to inflict such fine and imprisonment, and even infamous punishment on offenders, as the nature of the crime, considered in all its circumstances, shall require; neither doth it confine them to make use of their own prison, but leaves them at liberty to commit offenders to any prison in the kingdom which they shall think most proper, and doth not suffer any court to remove, or bail any person condemned to imprisonment by them.†—This is the language of that profound and accurate lawyer, and I wonder that any man of the diligence of the learned gentleman, who could have read this authority, and viewed the question on both sides, could have departed from it and affect to refer to the foolish saying of a clerk of the crown! Viewing this and the numerous authorities and precedents to which I mean to refer, how is it possible to aver that sending persons to the gaols in Gloucester and in Dorchester, is an illegal act, or beyond the power of the court? Will the learned gentleman say that if a publication of the libels in question took place in the county of Cornwall, the parties might not have been tried and convicted there as well as in Middlesex?—The learned attorney-general then proceeded to cite a long series of cases and precedents, all occurring since the Revolution, but a great part of them since the year 1786, for the purpose of showing that the court of King's-bench had exercised a discretionary and legal power in committing offenders to prison in different places distant from the scene of the offence or the session of the court, and that it ordered up delinquents from distant parts to be tried at its bar, and caused the infliction of punishments in different places as it deemed ex-

* B. R. H. 37.

† 2 Hawk. 8.

pedient; and the exercise of those powers was always undisturbed and unquestioned; and he dwelt upon the instance of lord Thanet's confinement in the Tower of London for an offence committed in the county of Kent,* as a proof that it was not the poverty of the offender that prevented him from calling the authority of the court into question.—With respect to the observations of the learned counsel for the plaintiffs upon the security required from them, and the difficulties they would labour under in consequence, he said, “I dare say if the learned gentleman's clients were to ask him whether such and such a particular act would not incur a forfeiture, that his answer would be, ‘I will not tell any man who contemplates a seditious publication, or meditates any other illegal act, how far he may go, and yet evade the law; how near the wind he might sail without endangering himself!’” The security required, he observed, was to guard against future libellous publications, to protect the public peace against future probable invasions of it, and proceeded on the same grounds and principles as various other sentences of the kind which were pronounced.

The attorney-general having concluded, the lord-chancellor moved, that the further hearing be adjourned to Thursday.—Ordered.

HOUSE OF LORDS.

Thursday, May 18th.

WRIT OF ERROR IN THE CASE OF WHITE AND HART.] Their lordships met at two o'clock, and most of the judges attended.

The *Solicitor-General* [Sir Thomas Plumer], spoke for about two hours in support of the right of the Court of King's Bench to pronounce the sentence which it had delivered in the case of White and Hart. He contended that there was no foundation for the doctrine laid down by the learned gentleman (Mr. Clifford) on the other side, on Tuesday last, when he attempted to maintain that the Court of King's Bench had no right to execute its sentence except in a gaol of the county wherein the offence was committed, a gaol of the county where the court actually sat, or their own peculiar gaol. He reviewed the historical part of that learned gentleman's speech, and examined his arguments as drawn from the instances of distant imprisonment in virtue of sentences passed by the court of Star-chamber. He controverted the statement that the court of Star-chamber owed its abolition in any principal degree to such punishments. The punishment which gave offence to parliament, was not one that sentenced to distant prisons (as they were called) in England, but, in the cases of Prynne, Bastwick, and others, who were sent to the islands

of Jersey, Guernsey, and Scilly. It was not historically correct, to say, that the abolition of the jurisdiction of that court was owing to such causes. There were other and weightier causes assigned for that measure. It was in fact, not the sentences, but the whole proceedings of that court previous to the passing of such sentences, that alarmed the fears, awakened the jealousies, and procured the votes of parliament which effected its abolition. In support of his observations, he referred to lord Clarendon. He noticed some expressions which had fallen from the learned gentleman, respecting words used by Bastwick when undergoing his sentence in Palace-yard, and desired to know by what modern lights it was discovered that the sayings of a man in Palace-yard, addressed to the mob, were to be cited by lawyers, or received in a grave and learned assembly as matter of illustration, reference or precedent. He observed that the cases by which the learned gentleman attempted to make out any thing in his support were all anterior to the Revolution. That learned gentleman, was, in various instances, of which he cited several from which he endeavoured to show the weakness of his arguments, erroneous in his notions respecting the right of the Court of King's Bench, even previous to the era of the Revolution. There was much said about good times and bad times; but, he should like to know into what political dictionary he was to look for a definition of which were the good times, and which were the bad times. There was always enough of that sort of argument to be met with whenever legal precedents were resorted to, whatever be the nature and necessity of the case. Coming down, however, to the period of the Revolution, he believed it would be obvious that in those best times, the mode of punishment now asserted to be illegal, was most frequently practised, and yet no doubts had then been raised as to its propriety and its legality. The learned solicitor then asserted that in the times of seven chief-justices and twenty-two judges, he had not less than twenty-one cases in point to offer to the notice of their lordships. Beginning with lord-chief-justice Holt, he continued with other instances from lord-chief-justice Parker, lord-chief-justice Mansfield, lord-chief-justice Kenyon, &c. up to the present time, during all which course many excellent constitutional puisne judges had also sat on the bench in that high criminal court; in all which cases judgment had been given and executed wrongfully and illegally, if the judgment in the present case were to be deemed illegal. He dwelt particularly on several individual cases, especially one in which a man was found guilty of perjury before a committee of the House of Commons on the Hindon election, and was sent to Hindon to be set upon the pillory in that place, where his example was likely to produce

* 6 How. Mod. St. Tr. 958.

the most beneficial effects; and another, in which for a crime committed in Wales, the convicted person suffered at Kennington, in Surrey. He mentioned another case of a distant crime, for which the execution took place at St. Thomas Watering, Kent, and an old instance of a man sent to Portsmouth to be executed for desertion or cowardice, because that was the place where the execution of that sentence would probably be most exemplary and beneficial. He recited all the cases mentioned on Tuesday by Mr. Attorney-General, and contended for the strict applicability of the more recent instances. But it was not merely on the cases he had cited, but on the general principles of the question that it ought to be decided. The Court of King's Bench was the chief criminal court in the kingdom. It was so described by all the ancient, as well as modern lawyers of repute. It was so called by Coke, who stated its antiquity and its power. It had a great part of the ancient *Justiciarium Angliæ*. Its jurisdiction was called *capitanus* and *generalis*, to show its universality and general superintendence. Hawkins, in his Pleas of the Crown (one of the best writers and authorities) had fully stated its extensive powers. It could, he contended, be restricted by none of those restrictions which confined the powers of inferior courts. And were the decisions of the judges of such a court to be treated like the practices of the office of a secretary of state, and such arguments supported merely by what lord Camden had said of the usage of such offices? Usage that had never before been made the subject of a solemn decision in a court of law? or by any arguments against the exploded practice of the exploded court of Star-chamber? In the many recent instances of imprisonment in distant gaols, was it to be believed, that the poverty of the individuals was the reason that prevented them from trying the merits of the practice of the judges? Had they not always sufficient legal assistance? Was there not then at that bar of which he was the great ornament, a learned lord who had so often exerted the greatest eloquence the bar ever knew in defence of such individuals, and who left nothing undone that zeal and talents could effect? And would he have left a stone unturned on behalf of his clients, if he had conceived the possibility of attacking the legality of the sentences pronounced upon them? With respect to the demand of securities for good behaviour, the practice was old, and used in the best times. It was absurd to talk of its operating as a perpetual imprisonment. The prolongation of imprisonment would depend on the bad character of the individual, whose friends could not trust to his good behaviour, even after the experience that had been taught him by his confinement. As to the difficulty of understanding what was meant by good behaviour, he could not enter fully enough into

the motives, views, and dispositions of certain persons to understand their difficulties on that subject. Good behaviour was what they might not easily understand, and cared little to learn. But they might easily learn it. There was a chapter in an elementary work (sir William Blackstone's) that would explain to them what it was necessary to know on that subject. All the instances he had noticed were viewed by the other side as too recent. They must go up to higher antiquity, they must mount up to the Conquest or beyond that period. Every thing he and his learned friend had to offer was too young for the modern school, they would begin *ab ovo*. The learned gentleman must know that they could not investigate accurately the nature of the sentence. The whole object of this appeal was to depreciate the character of our courts. "Humanitas," for that was the name signed to a libellous letter in the "Independent Whig," had considered the popular notion concerning the administration of our laws by juries as too exalted. These lovers of freedom, in their new discoveries, attacked the institutions best calculated to preserve it. The object was only to raise a ferment in men's minds, to throw discredit upon the judges of the land, and to take from our wisest establishments that public respect in which they had been held, and which they so much deserved. But the decisions of our chief courts of justice, and not the speech of a man to a mob in Palace-yard, would influence that decree which their lordships, he trusted, would then, in their wisdom, give. After a number of other remarks, the learned gentleman concluded.

Mr. Clifford began his reply by animadverting on the conduct of the attorney and solicitor-general, in the bad motives they had presumed, so liberally but so unjustly, to impute to those who had advised, or were concerned in bringing before their lordships the present appeal. He solemnly denied that it was done with any intention to depreciate the character of the judges of the Court of King's-bench, at which bar he himself practised, and where the present judges, he was sure, if they had done any thing in the exercise of their judicial functions which was founded on a mistake, would be quite as willing to rectify that mistake, on being shown the error, as any who had preceded them on that bench. He was confident that so far from this measure being considered as bearing the character attributed to it, it must be seen as one which gave the best and fairest opportunity for bringing this great question to an issue, by appealing to their lordships *en dernier resort*. Nothing more was attempted to be done than what the law of the land authorized, and what the cases of the individuals required. While he should forbear from following the attorney-general and the solicitor-general in the field of declamation and invective into which they had wandered, he must express, in some

degree, his gratitude to them for the greater part of the speeches they had delivered. They put him in mind of a fable which was lately quoted by a person of eminent abilities and character, in noticing the speech of a learned gentleman in some other place; it was the fable of the ass, who went into a field attracted by a thistle, but who went round and round about the thistle, fearful of touching it. The learned gentlemen, in like manner, went about and about it, but were extremely shy of touching on the principle of the question then before their lordships. He begged to re-state to their lordships, that the constitutional and legal principle he laid down with respect to the power of the Court of King's-bench, was this: that they had no right to send persons into imprisonment, in execution of a sentence pronounced by that court, except to the gaol of the county where the offence was committed, the gaol of the county where that court sat, or their own gaol. He maintained that no case had been cited to destroy the truth of his positions. The exceptions were not such as could furnish a rule. Hardly a case could they bring to bear on the subject that had not occurred since the Revolution, and he contended that if it was not legal to do so previous to that event, that event could not possibly make it legal. He had been told to produce an enactment to make it illegal; but he asserted that the liberties of the subject depended not upon enactments. Enactments ought to be produced to him to show him and their lordships that the practice had been rendered legal. This was the true principle of the constitution on such subjects. What he had said of the case of Bastwick had been observed upon with a triumphant sneer, as a foolish saying addressed to the people, who are styled by the learned gentleman the mob. But he had seen quoted the expression of an individual suffering a punishment as a precedent on a legal opinion. He had only quoted it as an illustration of what was the general feeling at that time, for it was scarcely in human nature that Bastwick should have used the expressions he did, had they been founded in falsehood, since his hearers must have very well known whether the practice was a new one or an old custom. Bastwick, in the spirit of those times, while he complained of the practice of sending persons to distant gaols, attributed the origin of the practice to the Jesuits. As to the opinion of lord Clarendon, it should be recollected, that the fourth article of impeachment against that nobleman, stated this as one of his offences; and his lordship, long afterwards, in noticing this circumstance, states, that he thought it a hard case for him to be charged and tried for an offence which he had only been guilty of, in common with others of the privy council. This was that noble lord's excuse. Reverting to the abolition of the Star-chamber, which was said by the learned gentlemen to have been occa-

sioned by an objection to their proceedings, and not to their sentences, he showed by a quotation from the parliamentary resolution, that the sentences, as well as the proceedings, formed the grounds of the abolition of that oppressive court. The authority he had quoted from lord Camden had been sneered at, the memory of that learned and venerable lord depreciated, and the hallowed precincts of the tomb violated by viperous slander. It was asked, What! would lord Camden have spoken of the decisions of the Court of King's-bench, as he did of the usage of the secretary of state's office? No! but the House of Lords were then in the same situation relative to that court, as lord Camden, when a judge, was to the secretary of state's office! With respect to the Hindon election, he stated a question that arose, respecting the payment of the expenses, which the sheriff refused, and the Court of King's-bench could not compel him to make them good. He wished the learned gentlemen to look into the general principles of our laws more accurately, they would see reasons for his view of the nature of county gaols, and the authority of courts. These gaols were the county gaols; they were built, repaired, and maintained at their own expense. They were obliged to keep the prisoners, they were liable to fines for offences committed within their county limits, which it was presumed they ought to have prevented. All the gaols were the king's gaols, it was perfectly true, and so were all the courts of justice, but yet this was so for the purposes of public benefit and public protection, and was limited by a variety of restrictions, conditions, and limitations. All the high roads, in the same way, were the king's roads, (though much of these might be private property); but they were the king's for the convenience and protection of his subjects in passing from place to place. The cases of imprisonment or execution in the city of London, pursuant to sentences passed in Westminster, presented no difficulty, since in fact the sheriffs of London were sheriffs of Middlesex, and the prison of Newgate was the prison of both. The learned gentleman went through a wide field of argument and illustration in support of the principles which he had asserted. He showed the hardships of the practice of requiring sureties for a length of time after the expiration of imprisonment. He quoted the declaration of the Bill of Rights against excessive bail, and unusual and cruel punishments, and concluded after a variety of other observations, a very argumentative and ingenious speech by protesting against the imputation of evil designs in this case, and deprecating such insinuations against the people of this country.

The counsel having left the bar, the lord chancellor rose, and briefly stated that he had no doubt on his mind respecting this question. Important as it was, it was not attend-

ed with much difficulty. It was his intention to move a question to be put to the learned judges upon the subject. His lordship then moved, That a question be referred to the judges for their opinion, whether the Court of King's-bench could send any person convicted in their court at Westminster to any gaol in England?

Earl Stanhope said, that having been unfortunately and unavoidably absent, and consequently not having heard the counsel who stated the case of the plaintiffs to the House, nor the answer of the attorney-general, he should not give a vote on the present occasion; but still there was a certain principle to which the House should conform, and it should proceed with the utmost regularity and deliberation to the decision of the point at issue before them, and particularly as to the severity of the punishment. He had always understood that it was a fundamental principle of the law of England that the parties were precisely on a level, that the scales of justice should be kept even, and that no improper questioning or application of motives should be tolerated in the counsel on either side.—The learned counsel for the plaintiffs had not charged the counsel for the crown with any improper motives; but on the other hand he must say, that the counsel for the crown, one of whom he personally and highly respected, as a most diligent and able man in his profession (Mr. Solicitor-general), had no right, at the bar of the House of Lords, to impute improper motives to a counsel who came to perform his professional duty. The present was not a charge of cruelty, it was a charge of error! and, according to an act of parliament passed in the first year of William and Mary, the Bill of Rights—it was, at least, an erroneous judgment. The 10th article of that important statute says, that excessive bail shall not be required; nor excessive fines imposed, nor cruel and unusual punishments inflicted! And would the solicitor-general say, that a thing done contrary to the prescriptions of this statute was not error, at the least. He did not mean to argue or to give an opinion upon the particular case before the House, but he thought before it decided, it should have been better informed as to the precedents referred to in support of the arguments advanced at the bar, and that the House ought to have laid before it an account of the different judgments which had been given, touching the case, down to a certain period. With respect to the nature of the security required in such a case as the present, he could not help contrasting it with that of the persons who were some time since convicted of attempting to blow up the King's-bench prison, they were sentenced as the parties at present before the House, to three years imprisonment. But what was the security required of them for their good behaviour after the expiration of their imprisonment—of persons convicted of an offence

in which the commission of deliberate murder must be contemplated? None; not to the amount of one shilling! In a conviction of perjury, no later than November last; an offence so injurious to the well-being of the community, what was the sentence of the Court? It was, that the offender be fined one shilling, imprisoned for three months, and farther until the said fine should be paid! Their lordships should bear in mind, in deciding on the case, that there was a scale of punishments, and take care, as far as in them lay, to render the punishment commensurate to the offence.

The Lord Chancellor observed, that as it appeared on the face of the record, the crime of which these two prisoners were convicted, was one of the most dangerous description. He referred to several instances of punishments early after the Revolution, for libels, and shewed that punishments in such cases of latter times were, comparatively speaking, far from being severe. His lordship, after some farther observation, amended the question to the following effect: "That it be referred to the judges to know their opinion whether the Court of King's-bench, in the case of the conviction of a person at Westminster, could legally send such person to any prison in England, other than the prison belonging to the Court, the county prison where the offence was committed, or that where the Court held its sittings? And also to know whether sureties for a reasonable time, for the good behaviour of such person, could be legally required?"

On the question being handed to the judges, their opinion was delivered to the House by sir James Mansfield, lord-chief-justice of the Common pleas. His lordship began by observing, that it was now fifty years since he became a member of the profession of the law, and he had never during all that time doubted or heard a doubt started of the right of the Court of King's-bench which was now called in question. Many cases had been cited which it was not his intention, or that of his brothers, to enter into. A sufficient number of instances both in ancient and in modern times, had been shown to prove the practice. The removal of persons from their friends by imprisonment was often unavoidable, and might occur in either of the cases specified. The judges had no doubt whatever upon the authority of the Court to send persons to prisons in England, other than those specified in the question referred to them. As to the second point they were equally of opinion unanimously, that the Court possessed authority legally to require such sureties for a reasonable time.

Lord Erskine could not act so unmanly a part as to avoid giving his opinion. He considered the appeal by writ of error as a grand proof of the excellence of our constitution, which in so many ways provided checks upon the constituted authorities of the land. The

law of libel had been brought as near perfection, as was perhaps, possible: though, in earlier life, he did not think that the practice of the courts was right and legal in some points, yet he had lived to see it remedied. He could not pretend to enter into the merits of the particular case in regard to the punishment, as that was not before him, though he must say that it was a strange thing to be forward in condemning an acquitting jury. He had not been so long in the profession as the venerable judge who had just delivered the opinion of the bench; but he had never entertained a doubt of the power of the Court of King's-bench upon this point. Had he ever done so, he should most certainly have availed himself of many opportunities in his professional practice, for the sake of those clients who had put themselves under his protection, to bring the question to a solemn decision.

After a few words from the lord chancellor, his lordship put the question, and the judgment of the Court of King's-bench was unanimously affirmed.

[*Vide Evans's Case*, 8 T. R. 172.]

See in 13 Hansard's Parliamentary Debates, 812, a Debate in the House of Commons (on March 27th, 1809), upon a Petition from Messrs. Hart and White, respecting their trials, convictions, and sentences, and the manner in which the sentence of imprisonment was executed. This Petition was withdrawn on account of an informality which was afterwards rectified, and the Petition was presented, read, and ordered to lie upon the table, on April 24th, in the same year.—It will be found in the Votes of that day, and in 14 Hansard's Parliamentary Debates, 175.

ADDENDA

TO

PICTON'S CASE.

Note to the words "learned counsel"

p. 475, l. 4, from bottom.

IN the "Act for making Slaves Real Estate, and the better Government of Slaves and Free Negroes," which was passed by the Legislature of St. Vincent's, in the year 1767, are the following Clauses, the last of which I apprehend to be that alluded to in the text:

[*Clause XXIX.*]"—And be it further enacted by the Authority aforesaid, That if any free person (not being a white), shall presume to strike a white person, he shall, by order of the next Justice, on proof of his striking, be severely whipped and imprisoned at the discretion of the said Justice, so as such imprisonment does not exceed six months.

[*Clause XXX.*]"—And be it further enacted by the Authority aforesaid, That if any white person shall strike, beat, or otherwise abuse any free Negroe or Mulatto, on proof thereof made to any Justice of the Peace, he shall be bound over to the Sessions, and be punished at the discretion of the Justices then sitting, any law or usage to the contrary notwithstanding.

[*Clause XXXI.*]"—And be it further enacted by the Authority aforesaid, That if any slave shall impudently strike or oppose any white person, any Justice, upon complaint and proof made, shall order a Constable to cause such slave to be publicly whipped at his discretion; and if such white person be any way hurt, wounded, or disfigured by any slave's resistance, such offending slave shall

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have his nose slit, or any member cut off, or be punished with death, at the discretion of any two Justices; *always excepting*, that the slave do not the same by his or her owner's, or master's orders, or in defence of his or her owner's or master's person or goods; and it shall be lawful for all persons to take away from any slave or slaves any hurtful clubs or other mischievous weapons whatsoever, unless such slave or slaves is or were intrusted with such weapons for the defence of his or their owner's goods or person."—*Laws of the Island of Saint Vincent and its Dependencies, from the first Establishment of a Legislature to the end of the year 1809*, p. 39, English fol. ed. of 1811.

Note to the words "magistrates of Cumberland" *p. 489, l. 16, from bottom.*

It appears by the records of the Court of King's Bench, that in Michaelmas Term 1789, a motion was made to the Court for leave to file a criminal information against the duke of Norfolk, for granting licences to several persons to keep public-houses within the city of Carlisle, to whom licences had been refused by the magistrates of the city: it being charged that this had been done in order to serve electioneering purposes.—The Court granted a rule to show cause.

In Hilary Term following, cause was shown on the part of the duke by several affidavits; in one of which the duke denied having acted to serve electioneering purposes, and stated that before he had granted the licences a case had been laid before Mr. Chambré, for his

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opinion upon the "Right of the county justices to interfere in granting licences, within the city of Carlisle?" and if they had such right, "Whether those justices who did not reside in the ward or division in which the city of Carlisle is situate could with propriety act at Carlisle?" upon which questions Mr. Chambré had given the following opinion:

"The charter of the city of Carlisle having no clause expressly giving an exclusive jurisdiction to the corporation justices, I am of opinion that in general the justices of the peace for the county have a concurrent jurisdiction with them, and may act in and for the city of Carlisle, as well as for other parts of the county. The proviso in the 2nd Geo. III. chap. 28th, which excepts cities and towns corporate, might probably be inserted with a view to the situation of corporations whose magistrates acted exclusively; but the terms of the proviso are general, and I think the courts of law would not restrain it in point of construction upon mere conjecture; and therefore I think the power of granting licences in the city of Carlisle depends upon the statute 5th and 6th Edw. VI. only. Under that statute any two justices may licence, and a general meeting for the purpose is not necessary; neither is there any limitation with respect to the time of granting the licences. But though I think two justices of the county may execute the power, yet they ought to do it with great caution, and upon full inquiry concerning the characters and conduct of those whom they licence, and particularly of those who have before been refused. And I think it would be proper (though not a strict legal requisite) to give notice to the city justices who may have refused, desiring to know the grounds of refusal. Should they

be satisfied that the rejection has proceeded from mere party motives, I see no impropriety in their granting licences."

And upon the other question the opinion was as follows:—"The statute 5th Edw. VI. on which I think the question depends, gives the power to the justices generally, without confining them to particular divisions; and therefore I think it unnecessary that the licensing justices should be resident in Cumberland ward."

This opinion was dated the 15th of Sept. 1789: and the duke stated, that before he joined with Mr. Christian in granting the licences, he sent a letter to the mayor desiring to know the objections upon which the licences had been refused; but the mayor sent him no answer.

The Court discharged the rule nisi for an information, but I have not been able to discover any note of what took place upon that occasion. With regard to this case of the magistrates, see what was said by lord Ellenborough in p. 488 and 783; see too Mr. Nolan's argument on the Special Verdict, p. 913.

Note to the words "they should further order"
p. 955, l. 6 from bottom.

Since this case was printed, there has appeared in "The Asiatic Journal" (Vol. 12, p. 587) a full and interesting report of the trial and conviction of certain inferior officers of justice, before the Hon. Sir Edmond Stanley, Chief Justice of the Supreme Court of Judicature at Madras, on an indictment for inflicting torture upon two individuals accused of murder, in order to extort from them a confession of their guilt.

ADDENDA

TO

DRAPER'S CASE.

The following are copies of the Documents referred to in p. 1063.

INDICTMENT.

Middlesex. { THE jurors for our lord the king
ser. { upon their oath present that heretofore to wit before the time of the composing writing printing and publishing of the false wicked malicious and defamatory libel hereinafter mentioned William Fullarton esquire now deceased was an officer in the army of our lord the king that is to say colonel of the twenty third regiment of light Dragoons and always conducted himself with the utmost propriety honesty integrity and honour as such officer as aforesaid to wit at West-

minster in the county of Middlesex And the jurors aforesaid upon their oath aforesaid do further present that before the time of the composing writing printing and publishing of the said libel the said William Fullarton Thomas Picton esquire formerly governor of the island of Trinidad and sir Samuel Hood knight of the Bath were duly appointed commissioners of our said lord the king for executing the office of governor and captain general of the said island of Trinidad and did act as such commissioners at the said island of Trinidad to wit at Westminster aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that before

the time of the composing writing printing and publishing of the said libel a certain charge was brought forward and made against the said Thomas Picton for having while governor of the said island of Trinidad directed the application of torture to one Luisa Calderon for the purpose of extorting a confession respecting a robbery supposed to have been committed in the said island of Trinidad and divers proceedings had taken place and been had at the said island of Trinidad respecting the said charges to wit at Westminster aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that heretofore to wit before the time of the composing writing printing and publishing of the said libel certain proceedings had taken place in the Court of our said lord the king before the king himself the said Court then being holden at Westminster in the county aforesaid upon a certain indictment preferred and found against the said Thomas Picton for certain offences and misdemeanors specified therein and relative to and concerning the application of torture to the said Luisa Calderon to wit at Westminster aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that Edward Alured Draper late of the parish of Saint James within the liberty of Westminster in the said county esquire well knowing the premises aforesaid and being a person of a most wicked and malicious temper and disposition and unlawfully wickedly and maliciously devising contriving and intending to defame asperse scandalize and vilify the said William Fullarton in his life-time and as much as in him the said Edward Alured Draper lay to deprive him the said William Fullarton of his good name fame character and reputation and to bring him into great scandal infamy disgrace hatred and contempt with all the liege subjects of our said lord the king and that the said William Fullarton had conducted himself in a most disgraceful and malicious manner towards the said Thomas Picton and also that the said William Fullarton whilst such colonel of the said regiment of our said lord the king had been guilty of making unfaithful returns respecting the said regiment on the twenty-ninth day of April in the forty-sixth year of the reign of our sovereign lord George the third by the grace of God of the United Kingdom of Great Britain and Ireland king defender of the faith and during the life-time of the said William Fullarton with force and arms at the parish aforesaid in the county aforesaid unlawfully wickedly and maliciously did compose write print and publish and cause and procure to be com-

posed written printed and published a certain false scandalous malicious and defamatory libel intituled "An Address to the British Public" containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the said William Fullarton as such officer and commissioner as aforesaid and of and concerning the conduct of the said William Fullarton as such officer and commissioner as aforesaid and of and concerning the said charge and prosecution against the said Thomas Picton and of and concerning the conduct of the said William Fullarton respecting the said charge and prosecution against the said Thomas Picton that is to say in one part thereof according to the tenor and effect following (to wit) "The motives which induced Mr. Fullarton" (meaning the said William Fullarton) "at so early a period of his sojourn in the country" (meaning in the island of Trinidad) "to advance a charge of this complicated nature" (meaning the said charge against the said Thomas Picton) "and so entirely contrary to the opinion and belief of his colleague, sir Samuel Hood" (meaning the said sir Samuel Hood) "knight of the Bath and one of the commissioners aforesaid, I" (meaning himself the said Edward Alured Draper) have not taken upon myself to investigate. It is, however, neither unreasonable nor unfair to conclude, that when according to his" (meaning the said William Fullarton's) "own declarations, he" (meaning the said William Fullarton) "received no instructions to examine into the previous government" (meaning the government of the said Thomas Picton), "and that when such an attempt was made by him" (meaning the said William Fullarton), "it was publicly, forcibly, and with the utmost earnestness, on the part of his" (meaning the said William Fullarton's) "colleague" (meaning the said sir Samuel Hood) "not only deprecated, but utterly decried and discredited, and his" (meaning the said William Fullarton's) "veracity at the same time in other concerns impeached and maintained before his majesty's council of the island" (meaning the island of Trinidad), "and where that impeachment was supported and sustained by all the members of that council but one, I" (meaning the said Edward Alured Draper) "say in the circumstances it is neither unreasonable nor unfair to conclude that Mr. Fullarton's" (meaning the said William Fullarton's) "motives in taking up this business" (meaning the said charge against the said Thomas Picton) "were not the result of a feeling or sense of public duty, nor in obedience to the requisition of public in-

structions, but if I" (meaning the said Edward Alured Draper) "cannot give him much credit in this respect I" (meaning the said Edward Alured Draper) "shall not be deficient in acknowledging that the taste (if I may so pervert the real meaning of the word) which he" (meaning the said William Fullarton) "has shown in the selection of his charge argues an acuteness of discrimination, which when we consider the nature of the work, he" (meaning the said William Fullarton) "meditated, proves his ability in the way of crimination. Excellence in any line should never pass unnoticed between him who most exalts, and him who most debases his nature; there is but the moral difference of right and of wrong; the wicked ingenuity of the act by which that difference is contrasted may still be a subject of admiration, and the man may be handed down to posterity an object of universal horror and execration, while the record of his villainy yet remains a black but extraordinary instance of perverted talents and distorted genius. Mr. Fullarton" (meaning the said William Fullarton) "knew the temper of the happy country from which he came; he" (meaning the said William Fullarton) "participated in accusations, which, not long since, had hunted down by a hue and cry of unpopularity, the reputation and fortune of a man, whom the highest and most honoured branch of the legislature at length pronounced innocent and guiltless. He" (meaning the said William Fullarton) "well knew the feelings of the people of England, and with what facility and success, every imposture before him" (meaning the said William Fullarton and that he was an imposture) "had roused those feelings, which, according to their direction, cast so much honour or so much disgrace on the national character. Happy, too happy, I" (meaning himself the said Edward Alured Draper) "conclude, did he" (meaning the said William Fullarton) "feel himself when he" (meaning the said William Fullarton) "was able, with an air of great philanthropy and plausibility to offer to the public a new victim" (meaning the said Thomas Picton) "for popular indignation; Religion had lost its hypocritical cowl; Mahomet had long since monopolized all this trade; Patriotism had expended its mask; Wilkes is no more; the French revolution is passed, and the civil and political liberty of England disjointed by the shock, wanted the cement and fiery infusion of an inhabitant of a new and tropical region to support its weakness and to renew its expiring strength. Luisa Calderon" (meaning the said Luisa Calderon) "was

to be brought from another world, and an hypocritical Mulatta prostitute" (meaning the said Luisa Calderon), "a self-convicted robber," (again meaning the said Luisa Calderon) "introduced into Westminster-hall, and associated with Hampden and with Sydney, to the edification and instruction of the present and succeeding generations. Why, alas! should this noble, generous, and high-minded feeling, the peculiar boast and glory of the English nation, be perverted to the basest and most degrading purposes? Why should every mountebank in politics, every bankrupt in fortune and in honour, be capable of leading this charitable and magnanimous people astray, and of turning their feeling hearts, and reflecting minds to the furtherance of their own base and wicked designs? That this has actually been the case in the business of mademoiselle Calderon," (meaning the said Luisa Calderon) "I" (meaning himself the said Edward Alured Draper) "have no difficulty in saying, that I" (meaning himself the said Edward Alured Draper) "shall be able most satisfactorily to prove." And in another part of the said libel according to the tenor and effect following (that is to say) "What was it that produced those honourable and unquestioned testimonials, found in the whole course of the interrogatories, in the body of the return to the Mandamus so often alluded to? Why have those active and zealous magistrates come forward, when their praise or eulogium could be of no use or interest to themselves, except where the foul breath of such a calumniator as Mr. Fullarton," (meaning the said William Fullarton and that he was a calumniator) "would scandalously insinuate, that they were leagued and colleague with him in crimes, and combined and united in a system of tyranny, oppression, and blood." And in another part of the said libel according to the tenor and effect following (that is to say) "In the base and infamous attempts to aggravate the supposed enormity of the crime imputed to colonel Picton," (meaning the said Thomas Picton) "and to fill up the four accusatory departments of which it had been composed (in the true spirit of the French Revolutionist) the foundations of religion and morality are sapped. The Catholic curate of the parish in which Luisa Calderon (meaning the said Luisa Calderon) "was born, is prevailed upon to furnish Mr. Smith, alias Vargas, and his worthy associate, Juan Montes, with fabricated certificates of her" (meaning the said Luisa Calderon's) "baptism and age, in order that the tender epithets of *enfant* and *pucelle* might be added to that of the interesting mademoiselle Cal-

deron, and as such she" (meaning the said Luisa Calderon) "was actually represented, when paraded by the honourable Mrs. Fullarton," (meaning the wife of the said William Fullarton) "who, on her arrival in Scotland, took her about in her carriage, and introduced her" (meaning the said Luisa Calderon) "to her female acquaintances." And in another part of the said libel according to the tenor and effect following (that is to say) "What will my honest countrymen say to this transaction? Colonel Fullarton F. R. S." (meaning the said William Fullarton) "to be proved the chief leader and conductor in a business" (meaning the said charge against the said Thomas Picton) "which would have added to the infamy of the man whose bones are now bleaching almost opposite the windows of the very mansion which I" (meaning himself the said Edward Alured Draper) "am informed, Mr. Fullarton" (meaning the said William Fullarton) "at present inhabits. Let my lords Buckinghamshire, and Sidmouth, Mr. Adderly, and his" (meaning the said William Fullarton's) "other quondam respectable friends, be pleased to read this part very attentively, they will perceive and acknowledge that my" (meaning the said Edward Alured Draper's) "case is made out, my proofs clear, unequivocal, and substantial." And in another part of the said libel according to the tenor and effect following (that is to say) "The six distinguished persons in this prosecution" (meaning the prosecution against the said Thomas Picton), "1st, Mr. William Fullarton, principal" (meaning the said William Fullarton); "2nd, Porto Rico a Spanish Mulatto, driver and whipper of the galley slaves; 3rd, Manuel Robles, a drunken soldier, a deserter from the Havannah; 4th, Raphael Shando, a galley slave, a thief, convicted of robbery, and sentenced as such; 5th, Juan Montes; 6th Pedro Vargas, alias Smith. I forbear adding the name of the lady to the list; Mr. Fullarton" (meaning the said William Fullarton) "has, I understand, monopolized her society, and I" (meaning himself the said Edward Alured Draper) "have already emblazoned her virtues. The authorities on which I" (meaning himself the said Edward Alured Draper) "disqualify the said Mr. William Fullarton" (meaning the said William Fullarton) "principal, from all pretensions to veracity or credit, to any thing he" (meaning the said William Fullarton) "has said or may say, concerning colonel Picton" (meaning the said Thomas Picton) "the grounds on which I" (meaning himself the said Edward Alured Draper) "disfranchise him" (meaning the said William Fullar-

ton) "of the rights and privileges of a gentleman, the proofs of my" (meaning the said Edward Alured Draper) "having displaced and removed him" (meaning the said William Fullarton) "from the attention or notice of any respectable member of society, and the reasons for which, I" (meaning himself the said Edward Alured Draper) "have leagued and associated him," (meaning the said William Fullarton) "in his present company, are all founded on the written evidence of the following gentlemen, and the authenticated documents annexed." And in another part of the said libel according to the tenor and effect following (that is to say) "I" (meaning himself the said Edward Alured Draper) "must now inform the public from authority beyond all question, that an official report was made by general the earl of Carhampton, commander-in-chief of his majesty's forces in Ireland, respecting the unfaithful returns made by Mr. Fullarton," (meaning the said William Fullarton) "as colonel of a regiment" (meaning the said twenty-third regiment of dragoons) "under his lordship's command, that the original documents were transmitted to the adjutant-general's office, Horse-guards, for the purpose of substantiating the charge, and with honest heart-felt satisfaction, do I" (meaning himself the said Edward Alured Draper) "record it to the eternal honour of our illustrious commander-in-chief, that a public official communication of the above-mentioned circumstance was made by his royal highness to the secretary of state's office, previous to Mr. Fullarton's" (meaning the said William Fullarton's) "leaving England. On this last transaction I shall not make a single comment." To the great damage scandal and disgrace of the said William Fullarton in his life-time in contempt of our said lord the king and his laws to the evil example of all other persons and against the peace of our said lord the king his crown and dignity

Second Count.—And the jurors aforesaid upon their oath aforesaid do further present that before the time of the publishing of the false wicked malicious and defamatory libel hereinafter next-mentioned a certain charge was brought forward and made by the said William Fullarton against the said Thomas Picton for having while governor of the said island of Trinidad without any justifiable cause directed the application of torture to the said Luisa Calderon and divers proceedings had taken place and been had at the said island of Trinidad respecting the said charge to wit at Westminster aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that

the said Edward Alured Draper being such person as aforesaid and well knowing the premises last aforesaid and further most unlawfully wickedly and maliciously devising contriving and intending to defame asperse traduce scandalize and vilify the said William Fullarton in his life-time and to deprive him of his good name fame character and reputation and to bring him into great scandal infamy disgrace hatred and contempt and to insinuate and cause it to be believed that the said William Fullarton was a person of no veracity or credit and that the conduct of the said William Fullarton in bringing forward the said charge against the said Thomas Picton was disgraceful and infamous and arose from motives of personal animosity towards the said Thomas Picton and that the said William Fullarton had made many base and infamous attempts to aggravate the supposed enormity of the crime imputed to the said Thomas Picton On the said twenty-ninth day of April in the forty-sixth year aforesaid and during the life-time of the said William Fullarton at the parish aforesaid in the county aforesaid unlawfully wickedly and maliciously did print and publish and cause to be printed and published a certain other false scandalous malicious and defamatory libel containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the said William Fullarton and of and concerning the said charge brought forward by the said William Fullarton against the said Thomas Picton and the proceedings thereon and of and concerning the said Luisa Calderon and of and concerning the conduct and behaviour of the said William Fullarton towards the said Luisa Calderon and respecting the said charge according to the tenor and effect following (that is to say) "The motives which induced Mr. Fullarton" (meaning the said William Fullarton) "at so early a period of his sojourn in the country to advance a charge of this complicated nature" (meaning the said charge against the said Thomas Picton) "and so entirely contrary to the opinion and belief of his colleague sir Samuel Hood, I" (meaning himself the said Edward Alured Draper) "have not taken upon myself to investigate, it is, however, neither unreasonable nor unfair to conclude, that when, according to his" (meaning the said William Fullarton's) "own declarations, he received no instructions to examine into the previous government, and that when such an attempt was made by him" (meaning the said William Fullarton) "it was publicly, forcibly, and with the utmost earnestness on the part of his colleague"

(meaning the said sir Samuel Hood) "not only deprecated, but utterly decried and discredited, and his" (meaning the said William Fullarton's) "veracity at the same time in other concerns, impeached and maintained before his majesty's council of the island," (meaning the island of Trinidad) "and where that impeachment was supported and sustained by all the members of that council but one, I" (meaning himself the said Edward Alured Draper) "say in these circumstances it is neither unreasonable nor unfair to conclude, that Mr. Fullarton's" (meaning the said William Fullarton's) "motives in taking up this business" (meaning the said charge against the said Thomas Picton) "were not the result of a feeling or sense of public duty, nor in obedience to the requisition of public instructions, but if I" (meaning the said Edward Alured Draper) "cannot give him much credit in this respect, I shall not be deficient in acknowledging that the taste, if I may so pervert the real meaning of the word, which he" (meaning the said William Fullarton) "has shown in the selection of his charge, argues an acuteness of discrimination, which when we consider the nature of the work he" (meaning the said William Fullarton) "meditated, proves his ability in the way of crimination. Excellence in any line should never pass unnoticed. Between him who most exalts and him who most debases his nature, there is but the moral difference of right and of wrong, the wicked ingenuity of the act by which that difference is contrasted may still be a subject of admiration, and the man may be handed down to posterity, an object of universal horror and execration, while the record of his villany yet remains a black, but extraordinary instance of perverted talents and distorted genius. Mr. Fullarton" (meaning the said William Fullarton) "knew the temper of the happy country from which he came, he" (meaning the said William Fullarton) "participated in accusations, which not long since, had hunted down by a hue and cry of unpopularity, the reputation and fortune of a man, whom the highest and most honored branch of the legislature at length pronounced innocent and guiltless. He" (meaning the said William Fullarton) "well knew the feelings of the people of England, and with what facility and success every impostor before him" (meaning the said William Fullarton and that he was an impostor) "had roused those feelings which, according to their direction, cast so much horror or so much disgrace on the national character. Happy, too happy, I" (meaning the said Edward

Alured Draper) "conclude, did he" (meaning the said William Fullarton) "feel himself, when he" (meaning the said William Fullarton) "was able with an air of great philanthropy and plausibility to offer to the public a new victim for popular indignation. Religion had lost its hypocritical cowl. Mahomet had long since monopolized all this trade. Patriotism had expended its masks—Wilkes is no more—the French Revolution is passed, and the civil and political liberty of England disjointed by the shock, wanted the cement and fiery infusion of an inhabitant of a new and tropical region to support its weakness, and renew its expiring strength. Luisa Calderon" (meaning the said Luisa Calderon) "was to be brought from another world, and an hypocritical Mulatta prostitute" (meaning the said Luisa Calderon) "a self-convicted robber" (again meaning the said Luisa Calderon) "introduced into Westminster-hall, and associated with Hampden and with Sydney, to the edification and instruction of the present and succeeding generations. Why alas! should this noble generous and high-minded feeling the peculiar boast and glory of the English nation, be perverted to the basest and most degrading purposes? Why should every mountebank in politics, every bankrupt in fortune and in honour, be capable of leading this charitable and magnanimous people astray, and of turning their feeling hearts and reflecting minds, to the furtherance of their own base and wicked designs? That this has actually been the case in the business of mademoiselle Calderon" (meaning the said Luisa Calderon) "I" (meaning himself the said Edward Alured Draper) "have no difficulty in saying that I" (meaning himself the said Edward Alured Draper) "shall be able most satisfactorily to prove," to the great damage, scandal, and disgrace of the said William Fullarton in his life-time in contempt of our said lord the king and his laws to the evil example of all other persons and against the peace of our said lord the king his crown and dignity.

3rd Count.—And the jurors aforesaid upon their oath aforesaid do further present that before the time of the publishing of the false scandalous malicious slanderous and defamatory libel hereinafter next mentioned a certain charge had been brought forward and made by the said William Fullarton against the said Thomas Picton respecting the application of torture to the said Luisa Calderon and divers proceedings had taken place and been had at the said island of Trinidad respecting the said charge to wit at Westminster aforesaid in the county aforesaid And

the jurors aforesaid upon their oath aforesaid do further present that the said Edward Alured Draper being such person as aforesaid and well knowing the premises last aforesaid and further most unlawfully wickedly and maliciously devising contriving and intending to defame asperse traduce scandalize and vilify the said William Fullarton in his life-time and to deprive him of his good name fame character and reputation and to bring him into great scandal infamy and disgrace hatred and contempt on the said twenty-ninth day of April in the forty sixth year aforesaid and during the life-time of the said William Fullarton at the parish aforesaid in the county aforesaid unlawfully wickedly and maliciously did publish and cause to be published a certain other false scandalous malicious and defamatory libel containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the said William Fullarton and of and concerning the said charge brought forward by the said William Fullarton and of and concerning the conduct and behaviour of the said William Fullarton respecting the same according to the tenor and effect following (that is to say) "In the base and infamous attempts to aggravate the supposed enormity of the crime imputed to colonel Picton, and to fill up the four accusatory departments of which it had been composed (in the true spirit of the French revolutionist) the foundations of religion and morality are sapped. The Catholic curate of the parish in which Luisa Calderon" (meaning the said Luisa Calderon) "was born, is prevailed upon to furnish Mr. Smyth, alias Vargas, and his worthy associate Juan Montes, with fabricated certificates of her" (meaning the said Luisa Calderon's) "baptism and age, in order that the tender epithets of *enfant* and *pucelle* might be added to that of the interesting mademoiselle Calderon" (meaning the said Luisa Calderon) "and as such, she" (meaning the said Luisa Calderon) "was actually represented when paraded by the honourable Mrs. Fullarton" (meaning the wife of the said William Fullarton) "who, on her arrival in Scotland, took her about in her carriage, and introduced her" (meaning the said Luisa Calderon) "to her female acquaintances." And in another part of the said libel according to the tenor and effect following (that is to say) "What will my honest countrymen say to this transaction, colonel Fullarton, F. R. S." (meaning the said William Fullarton) "to be proved the chief leader and conductor in a business" (meaning the said charge against the said Thomas Picton) "which would have added to the infamy

of the man whose bones are now bleaching almost opposite the windows of the very mansion which I" (meaning himself the said Edward Alured Draper) "am informed Mr. Fullarton" (meaning the said William Fullarton) "at present inhabits. Let my lords Buckinghamshire and Sidmouth, Mr. Adderley and his" (meaning the said William Fullarton's) "other quondam respectable friends be pleased to read this part over attentively; they will perceive and acknowledge that my" (meaning the said Edward Alured Draper's) "case is made out, my proofs clear, unequivocal, and substantial." And in another part of the said last mentioned libel according to the tenor and effect following (that is to say) "The six distinguished persons in this prosecution" (meaning the prosecution against the said Thomas Picton) "are 1st, Mr. William Fullarton, principal" (meaning the said William Fullarton); "2nd, Porto Rico, a Spanish Mulatto driver and whipper of the galley slaves; 3rd, Manuel Robles, a drunken soldier, a deserter from the Havannah; 4th Raphael Shando, a galley slave, a thief convicted of robbery, and sentenced as such; 5th, Juan Montes; 6th Pedro Vargas, alias Smith. I forbear adding the name of the lady to the list. Mr. Fullarton" (meaning the said William Fullarton) "has, I understand monopolized her society, and I have already emblazoned her virtues. The authorities on which I" (meaning himself the said Edward Alured Draper) "disqualify the said Mr. Wm. Fullarton" (meaning the said William Fullarton) "principal, from all pretension to veracity or credit to any thing he" (meaning the said William Fullarton) "has said or may say concerning colonel Picton" (meaning the said Thomas Picton) "the grounds on which I" (meaning himself the said Edward Alured Draper) "disfranchise him" (meaning the said William Fullarton) "of the rights and privileges of a gentleman, the proofs of my" (meaning himself the said Edward Alured Draper) "having displaced and removed him" (meaning the said William Fullarton) "from the attention or notice of any respectable member of society, and the reasons for which I" (meaning himself the said Edward Alured Draper) "have leagued and associated him" (meaning the said William Fullarton) "in his present company, are all founded on the written evidence of the following gentlemen, and the authenticated documents annexed."—To the great damage scandal and disgrace of the said William Fullarton in his life-time In contempt of our said lord the king and his laws To the evil example of all other persons and against the

peace of our said lord the king his crown and dignity.

4th Count—And the jurors aforesaid upon their oath aforesaid do further present that before the time of the printing and publishing of the false wicked malicious slanderous and defamatory libel hereinafter mentioned a certain charge was brought forward and made by the said William Fullarton against the said Thomas Picton respecting the application of torture to the said Luisa Calderon and divers proceedings had taken place and been had at the said island of Trinidad respecting the said charge to wit at Westminster aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that the said Edward Alured Draper being such person as aforesaid and well knowing the premises last aforesaid and further most unlawfully wickedly and maliciously devising contriving and intending to defame traduce scandalize and vilify the said William Fullarton in his life-time and to deprive him of his good name fame character and reputation and to bring him into great scandal infamy disgrace hatred and contempt and to insinuate and cause it to be believed that the said William Fullarton was a person of no veracity or credit and that the conduct of the said William Fullarton in bringing forward the said charge against the said Thomas Picton was disgraceful and infamous and arose from motives of personal animosity towards the said Thomas Picton and that the said William Fullarton has made many base and infamous attempts to aggravate the supposed enormity of the crime imputed to the said Thomas Picton on the said-twenty ninth day of April in the forty-sixth year aforesaid and during the life-time of the said William Fullarton at the parish aforesaid in the county aforesaid unlawfully wickedly and maliciously did publish and cause to be published certain other false scandalous malicious and defamatory libels containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the said William Fullarton and of and concerning the said charge brought forward by the said William Fullarton and of and concerning the conduct and behaviour of the said William Fullarton respecting the same according to the tenor and effect following (to wit) "In the base and infamous attempts to aggravate the supposed enormity of the crime imputed to colonel Picton, and to fill up the four accusatory departments of which it had been composed in the true spirit of the French revolutionist, the foundations of religion and morality are sapped. The Catholic

curate of the parish in which Luisa Calderon" (meaning the said Luisa Calderon) "was born, is prevailed upon to furnish Mr. Smyth, alias Vargas, and the worthy associate Juan Montes, with fabricated certificates of her" (meaning the said Luisa Calderon's) "baptism and age, in order that the fender epithets of *enfant* and *pucelle* might be added to that of the interesting mademoiselle Calderon" (meaning the said Luisa Calderon) "and as such, she" (meaning the said Luisa Calderon) "was actually represented when paraded by the honourable Mrs. Fullarton" (meaning the wife of the said William Fullarton) "who, on her arrival in Scotland, took her about in her carriage, and introduced her" (meaning the said Luisa Calderon) "to her female acquaintances, I" (meaning himself the said Edward Alured Draper) "have frequently asserted that I" (meaning himself the said Edward Alured Draper) "should produce respectable vouchers for what I" (meaning himself the said Edward Alured Draper) "assert; my authority for this is, I" (meaning the said Edward Alured Draper) "believe unquestionable. It is by a letter from a gentleman who was in Scotland at the time, and who writes as follows: 'A few weeks before I last left Scotland, Mr. Fullarton arrived with his family from Trinidad; at that moment I was in Ayrshire, and mixed with several of his friends; and dining one day at the (lord provost's) mayor's house, in Ayr mark my astonishment, when I was told that along with colonel Fullarton, there had arrived with his lady a mademoiselle Luisa Calderon, whom the colonel and Mrs. F. paraded about with them in their carriage, introducing her wherever they went, as the blessed innocent who was the devoted victim of colonel Picton's tyranny, &c. &c. (signed), 'JOHN DOWNIE.' What will my honest countrymen say to this transaction? Colonel Fullarton F. R. S." (meaning the said William Fullarton) "to be proved the chief leader and conductor in a business" (meaning the said charge against the said Thomas Picton) "which would have added to the infamy of the man whose bones are now bleaching almost opposite the windows of the very mansion which I" (meaning himself the said Edward Alured Draper) "am informed Mr. Fullarton" (meaning the said William Fullarton) "at present inhabits. Let my lords Buckinghamshire and Sidmouth, Mr. Adderley and his" (meaning the said William Fullarton's) "other quondam respectable friends, be pleased to read this part over attentively, they will perceive and acknowledge that my" (meaning the said Edward Alured Draper's) "case is made

out, my proofs clear, unequivocal, and substantial"—To the great damage scandal and disgrace of the said William Fullarton in his life-time In contempt of our said lord the king and his laws To the evil example of all other persons and against the peace of our said lord the king his crown and dignity.

5th Count—And the jurors aforesaid upon their oath aforesaid do further present that before the composing writing printing and publishing the false wicked malicious scandalous and defamatory libel hereinafter mentioned a certain charge was brought forward and made by the said William Fullarton against the said Thomas Picton respecting the application of torture to the said Luisa Calderon and divers proceedings had taken place and been had at the said island of Trinidad respecting the said charge to wit at Westminster aforesaid in the county aforesaid And the jurors aforesaid upon their oath aforesaid do further present that the said Edward Alured Draper being such person as aforesaid and most unlawfully wickedly and maliciously devising contriving and intending to defame asperse traduce scandalize and vilify the said William Fullarton in his life-time and to deprive him of his good name fame character and reputation and to bring him into great scandal infamy disgrace hatred and contempt and to insinuate and cause it to be believed that the said William Fullarton was a person of no veracity or credit on the said twenty-ninth day of April in the forty-sixth year aforesaid and during the life-time of the said William Fullarton at the parish aforesaid in the county aforesaid unlawfully wickedly and maliciously did print and publish and cause to be printed and published a certain other false scandalous malicious and defamatory libel containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the said William Fullarton according to the tenor and effect following (that is to say) "The authorities on which I" (meaning himself the said Edward Alured Draper) "disqualify the said Mr. William Fullarton," (meaning the said William Fullarton) "principal, from all pretension to veracity or credit to any thing he" (meaning the said William Fullarton) "has said, or may say concerning colonel Picton" (meaning the said Thomas Picton) "the grounds on which I" (meaning himself, the said Edward Alured Draper) "disfranchise him" (meaning the said William Fullarton) "of the rights and privileges of a gentleman, the proofs of my" (meaning himself, the said Edward Alured Draper) "having displaced and removed him'

(meaning the said William Fullarton) "from the attention or notice of any respectable member of society, and the reasons for which I" (meaning himself, the said Edward Alured Draper) "have leagued and associated him" (meaning the said William Fullarton) "in his present company, are all founded on the written evidence of the following gentlemen, and the authenticated documents annexed"—To the great damage scandal and disgrace of the said William Fullarton in his life-time In contempt of our said lord the king and his laws To the evil example of all other persons and against the peace of our said lord the king his crown and dignity.

6th Count—And the jurors aforesaid upon their oath aforesaid do further present that before the time of the printing and publishing of the false wicked malicious slanderous and defamatory libel hereinafter mentioned the said William Fullarton now deceased was an officer in the army of our said lord the king that is to say colonel of the twenty-third regiment of dragoons and always conducted himself with the utmost propriety honesty integrity and honour as such officer as aforesaid to wit at Westminster in the county of Middlesex And the jurors aforesaid upon their oath aforesaid do further present that the said Edward Alured Draper well knowing the premises last aforesaid and being such person as aforesaid and devising contriving and intending to defame asperse traduce scandalize and vilify the said William Fullarton in his life-time and as much as in him the said Edward Alured Draper lay to deprive him the said William Fullarton of his good name fame character and reputation as an officer and a gentleman and to cause it to be believed that the said William Fullarton whilst such colonel of the said regiment of our said lord the king had been guilty of making unfaithful returns respecting the said regiment on the said twenty-ninth day of April in the forty-sixth year aforesaid at the parish aforesaid in the county aforesaid and during the life-time of the said William Fullarton unlawfully wickedly and maliciously did print and publish and cause to be printed and published a certain other false scandalous malicious and defamatory libel containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the conduct of the said William Fullarton as such colonel as aforesaid which said false wicked malicious slanderous and defamatory libel is to the tenor and effect following (that is to say) "I" (meaning himself, the said Edward Alured Draper) "must now inform the public, from authority beyond all ques-

tion, that an official report was made by general the earl of Carhampton, commander-in-chief of his majesty's forces in Ireland, respecting the unfaithful returns made by Mr. Fullarton" (meaning the said William Fullarton) "as colonel of a regiment" (meaning the said twenty-third regiment of dragoons) "under his lordship's command, that the original documents were transmitted to the adjutant-general's office, Horse-guards, for the purpose of substantiating the charge; and with honest heartfelt satisfaction do I" (meaning himself, the said Edward Alured Draper) "record it, to the eternal honour of our illustrious commander-in-chief, that a public official communication of the above-mentioned circumstance, was made by his royal highness to the secretary of state's office, previous to Mr. Fullarton's" (meaning the said William Fullarton's) "leaving England."—To the great damage scandal and disgrace of the said William Fullarton in his life-time To the evil example of all other persons In contempt of our said lord the king and his laws and against the peace of our said lord the king his crown and dignity.

7th Count—And the jurors aforesaid upon their oath aforesaid do further present that the said Edward Alured Draper being such person as aforesaid and devising contriving and intending to defame asperse traduce scandalize and vilify the said William Fullarton in his life-time and as much as in him the said Edward Alured Draper lay to deprive him the said William Fullarton of his good name fame character and reputation and to cause it to be believed that the said William Fullarton whilst colonel of a regiment under the command of the earl of Carhampton had been guilty of making unfaithful returns respecting the said regiment on the said twenty-ninth day of April in the forty-sixth year of the reign of our said lord the king at the parish aforesaid in the county aforesaid and during the life-time of the said William Fullarton unlawfully wickedly and maliciously did publish and cause to be published a certain other false scandalous malicious and defamatory libel containing therein divers false wicked scandalous malicious and defamatory matters of and concerning the conduct of the said William Fullarton as such colonel as aforesaid which said false wicked malicious slanderous and defamatory libel is to the tenor and effect following (that is to say) "I" (meaning himself, the said Edward Alured Draper) "must now inform the public, from authority beyond all question, that an official report was made by general the earl of Carhampton, commander-in-chief of

his majesty's forces in Ireland, respecting the unfaithful returns made by Mr. Fullarton" (meaning the said William Fullarton) "as colonel of a regiment under his lordship's command"—To the great damage scandal and disgrace of the said William Fullarton in his lifetime In contempt of our said lord the king and his laws To the evil example of all other persons and against the peace of our said lord the king his crown and dignity

IN THE KING'S BENCH.

Middlesex.

The KING

against

EDWARD ALURED DRAPER, esq.

Daniel Baird, servant to William Fullarton, late of Worton-house, Isleworth, in the county of Middlesex, esq. deceased, maketh oath and saith, that he attended the said William Fullarton, in the capacity of servant, to the Island of Trinidad, when he went there as first commissioner for executing the office of governor in the year one thousand eight hundred and two; and that this deponent also accompanied the said William Fullarton back to Great Britain, and landed at Port Glasgow, in October, one thousand eight hundred and three; and this deponent further saith, that he travelled from Port Glasgow to Ayr, and from thence to London, in company with Luisa Calderon, and Raphael Shando two of the witnesses who came to Great Britain for the purpose of giving evidence against general Picton, respecting certain charges that were then intended to be preferred against him, and who were placed, by the said William Fullarton, under the care of this deponent and one John Ferguson, now deceased, another servant of said William Fullarton; and that he, deponent, is very certain that the said Luisa Calderon did not travel with Mrs. Fullarton, the wife of the said William Fullarton, in her carriage, nor did the said Mrs. Fullarton carry the said Luisa Calderon about with her in her carriage any where; on the contrary, this deponent saith, that the said Mrs. Fullarton, during her stay in Ayrshire, was confined to her house through indisposition. DANIEL BAIRD.

Sworn in Court, this 21st day
of November, 1808.

By the COURT.

IN THE KING'S-BENCH.

Middlesex.

The KING

against

EDWARD ALURED DRAPER, esq.

Andrew Hunter Aiken, of Hampstead,

in the county of Middlesex, esq. maketh oath and saith, that he, this deponent, is well acquainted with the character of the hand-writing of John Murdock, esq. sheriff substitute of the county of Ayr, and that the name "John Murdock" set and subscribed to the jurate of the annexed affidavit, is of the proper hand-writing of the said John Murdock, according to the best of this deponent's knowledge and belief; and this deponent further saith, that the said John Murdock is a magistrate authorized by the law of Scotland to administer oaths and take affidavits.

A. H. AIKEN.

Sworn in Court, this 21st day
of November, 1808.

By the COURT.

IN THE KING'S-BENCH.

The KING

On the Prosecution of the Honourable
Marianne Hamilton Fullarton, Widow,
against

EDWARD ALURED DRAPER, esq.

George Charles, of the town of Ayr, in North Britain, esq. doctor of physic, maketh oath and saith, that he was well acquainted with William Fullarton, of Fullarton, but late of Worton-house, Isleworth, in the county of Middlesex, esq. deceased; and this deponent further saith, that he, this deponent, was lord provost or mayor of Ayr, in October, one thousand eight hundred and three, when the said William Fullarton arrived with his family from the island of Trinidad; and that during a short stay, that the said William Fullarton, with his family, made in the said county of Ayr, he, this deponent, attended the honourable Mrs. Fullarton, as her physician, every day, she being obliged to keep her house from ill health, owing, as this deponent believes, to the effects of a warm climate and a long sea voyage; so that it is not true, as is stated by the defendant, in a pamphlet, published by him, intituled, "An Address to the British Public, on the Case of Brigadier General Picton," that the said Mrs. Fullarton took about one Luisa Calderon in her carriage with her, and introduced her to her female acquaintances; and this deponent further saith, that he hath not the least knowledge of Mr. John Downie, nor did ever a person of that name dine at this deponent's house, nor did the deponent ever hear of such a person until he read the extract of a letter said to be signed by him, the said John Downie, in the said pamphlet published by the said defendant; and this deponent further saith, that, save from the said pamphlet, he hath never heard, nor doth he believe that Mrs. Fullarton introduced the said

Luisa Calderon to any of her female acquaintances.

GEORGE CHARLES, M. D.
and present Provost of Ayr.

Sworn before me, sheriff sub. of
the county of Ayr, this 3rd of
November, 1808 years.

JOHN MURDOCH.

IN THE KING'S-BENCH. Middlesex.

The KING

against

EDWARD ALURED DRAPER, esq.

The Honourable *Marianne Hamilton Fullarton*, of Barnes Common, in the county of Surrey, widow of William Fullarton, late of Worton-house, Isleworth, in the county of Middlesex, esq. deceased, maketh oath and saith, that this deponent accompanied her husband, the said William Fullarton, from the island of Trinidad to Great Britain, and landed in the month of October, in the year one thousand eight hundred and three, at Port Glasgow, whence this deponent went into Ayrshire, and there remained a few days; and this deponent further saith, that during her stay in Ayrshire, she was so much indisposed as never once to have left home, and was attended regularly by Dr. Charles, a physician of eminence, residing in the town of Ayr; and this deponent further saith, that at no period of time during her stay in Ayrshire, or on her journey, did she carry about with her, in her carriage, Luisa Calderon, who came from Trinidad with the said William Fullarton, for the purpose of giving evidence against Thomas Picton, esq.; nor did this deponent, at any time, introduce the said Luisa Calderon to her female acquaintances, as is untruly stated in a pamphlet, published by the said defendant, Edward Alured Draper, intituled, "An Address to the British Public."

M. H. FULLARTON.

Sworn in court, this 21st Nov. 1808.

By the COURT.

IN THE KING'S-BENCH.

The KING

On the Prosecution of the honourable
Marianne Hamilton Fullarton,

against

EDWARD ALURED DRAPER, esq.

John Wilkinson, of Red-Lion-square, in the county of Middlesex, gentleman, and *James Pasmore*, of Doughty-street, in the same county, severally make oath and say, and first, this deponent, John Wilkinson, for himself, maketh oath and saith, that a bill of indictment was preferred in this honourable court, in Hilary Term, one thousand eight hundred and

four, against Thomas Picton, esq. formerly governor of the island of Trinidad, on the prosecution of Luisa Calderon, for inflicting torture on her; and that such bill having been found by the grand jury, the said indictment came on to be tried at the sittings after Hilary Term, one thousand eight hundred and six, when the said Thomas Picton was found guilty; and this deponent, John Wilkinson, for himself further saith, that Pedro Vargas, Juan Montes, and Raphael Shando, were three witnesses examined on the part of the prosecution on the said trial; and this deponent, John Wilkinson, for himself further saith, that the said Thomas Picton caused this honourable Court to be moved in Easter Term then following for a new trial, when the said Court was pleased to grant a rule to show cause; and this deponent, John Wilkinson, for himself further saith, that in the month of April, in the said year one thousand eight hundred and six, divers inquiries were depending before his majesty's most honourable privy council, relating to certain charges brought forward by William Fullarton, esq. now deceased, late first commissioner for executing the office of governor, &c. in the said island, against Thomas Picton, for various acts committed by him whilst he was so governor in the said island of Trinidad; and that whilst such inquiries and charges were depending, and just after the said Thomas Picton had so obtained a rule Nisi for a new trial of the said indictment, the said defendant, Edward Alured Draper, published, or caused to be published, a certain pamphlet, intituled, "An Address to the British Public, on the Case of Brigadier-General Picton;" and this deponent, John Wilkinson, for himself further saith, that shortly after the publication of the said pamphlet, the said William Fullarton caused an action to be commenced in this honourable court, against the said Edward Alured Draper, on account of a libel contained in the said pamphlet, for the express purpose, as this deponent believes, of enabling the said Edward Alured Draper to justify the said libel, if he had it in his power so to do, being advised by his counsel rather to bring an action, and afford the defendant such opportunity than either to apply to this honourable Court for a criminal information, or to prefer a bill of indictment against him the said Edward Alured Draper; and this deponent, John Wilkinson, for himself further saith, that the said defendant having availed himself of such opportunity, and pleaded to the said action, issue was joined in the said action in Hilary Term, one thousand eight hundred and seven, and notice of trial

given by the said William Fullarton, for the sittings after the said Hilary Term; but that the said cause was not then tried, owing to the said Edward Alured Draper having obtained an injunction from the court of Exchequer to restrain proceeding at common law until the return of two commissions issued out of that court, for the purpose of examining witnesses in Ireland and in Scotland in support of his plea; and this deponent, John Wilkinson, for himself, further saith, that he hath been informed, and believes, that although the said two commissions were issued in the month of May, in the year one thousand eight hundred and seven, yet they were neither of them opened until the month of November following; whereupon the said William Fullarton in Michaelmas Term now last, caused the said court of Exchequer to be moved, to dissolve the said injunction, when the said Edward Alured Draper, as this deponent hath been informed, undertook to proceed to open the said commissions so obtained forthwith; and in consequence of such motion, the said Edward Alured Draper did cause his witnesses to be examined, but owing to such great delay being occasioned by the said Edward Alured Draper, the said action at the suit of the said William Fullarton, in this honourable court, was not brought to a conclusion, but the same necessarily abated by the decease of the

said William Fullarton, in the month of February, one thousand eight hundred and eight; and this deponent, John Wilkinson, for himself further says, that he was employed by the said William Fullarton, as his attorney and solicitor, to conduct the said action and the said suit in equity, up to the end of Michaelmas Term last: and this deponent, James Pasmore, for himself saith, that he was employed by the said Wm. Fullarton, as his attorney and solicitor, to conduct the said action, and suit in equity, in Hilary Term last; and both these deponents for themselves further say, that as far as they were respectively concerned in the conduct of the said action and suit in equity, they verily believe that the sole reason for the same not having been brought to a conclusion before the death of the said William Fullarton, was through the dilatory proceedings of the said Edward Alured Draper.

J. WILKINSON.

JAMES PASMORE.

Sworn by the deponent, John Wilkinson, in court, the 15th day of November, 1808.

By the Court.

Sworn by the deponent, James Pasmore, in court, the 16th day of November, 1808.

By the Court.

END OF VOL. XXX.

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